

(2009) 07 JH CK 0044**Jharkhand High Court****Case No:** None

Dr. G.K. Lath @ Gopal Krishna
Lath

APPELLANT**Vs**

State of Jharkhand and Another

RESPONDENT**Date of Decision:** July 23, 2009**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 342, 347, 387, 504, 506

Citation: (2010) CriLJ 262 : (2011) 7 RCR(Criminal) 934**Hon'ble Judges:** R.R. Prasad, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

R.R. Prasad J.

1. This writ application is directed against the order dated 13.6.2008 passed by the learned Sessions Judge, Jamshedpur in Cr. Rev. No.195 of 2007 affirming the order dated 18.5.2007 passed by the Judicial Magistrate, Jamshedpur in C/1 case No. 704 of 2001 whereby the petition for discharge filed by the petitioner was rejected.
2. The facts giving rise this application are that the complainant - respondent No. 2 filed a complaint alleging therein that on 18.9.2000 when the petitioner asked him on telephone to come to his chambers at Tata Main Hospital, he went there where he found the presence of 5-6 security men. There the petitioner and other securitymen compelled him to right down an application of premature retirement. On getting the said application, this petitioner disclosed that this has been procured at the instance of other accused persons, Managing Director as well as Executive Director of the TISCO. Thereafter this petitioner threatened him not to report to anyone otherwise, he would be killed by securitymen. The next day, the complainant reported the matter before the Bistupur Police Station but they did not take any interest in the matter and then no option was left with him but to lodge the

complaint as the complainant had never given application for pre-mature retirement willingly, rather he was compelled to right that application, though, as per the terms and conditions, one month's notice was required to be given.

3. Thereupon, statement of the complainant was recorded on solemn affirmation and the matter was taken for enquiry. After holding the enquiry, learned Magistrate did find that offence under Sections 342, 347, 387, 504 and 506 of the Indian Penal Code is *prima facie* made out and hence, issued summon to the petitioner. Upon putting the appearance, an application was filed to discharge the application but that prayer was refused by the learned Magistrate, vide its order dated 20.6.2006 which was challenged before the learned Sessions Judge, Jamshedpur, who upon hearing the parties set aside the order and remitted the case back before the learned Magistrate for passing a reasoned order. Thereupon learned Magistrate upon hearing the parties passed an order on 18.5.2007 holding therein that there appears to be *prima facie* case against the petitioner for the offence mentioned above and that order was challenged again before the learned Sessions Judge in Cr. Rev. No. 195 of 2007 but it got dismissed on 13.6.2008.

4. Being aggrieved with that order, this writ application has been filed.

5. Learned Counsel appearing for the petitioner submits that upon asking by the respondent No. 2 for pre mature retirement when he was made to retire by the management, the respondent No. 2 accepted it but after ten months of his retirement, a complaint was lodged with all false allegation so that management may succumb to his terms and conditions. However, even if the entire allegations made in the complaint petition are taken to be true, no offence whatsoever is made out and as such, both the courts below committed illegality in not discharging the petitioner from the case and therefore, the orders passed by the courts below refusing to discharge the petitioner from the case are fit to be set aside.

6. As against this, learned Counsel appearing for the respondent No. 2 submits that at the stage of framing of charge, the Magistrate is only required to take into consideration as to whether any *prima facie* case is made out or not and keeping in view that principle, both the courts below after taking into consideration the facts and circumstances did come to the conclusion that *prima facie* case is made for the offences under which cognizance has been taken and as such, courts below are absolutely justified in refusing to discharge the petitioner from the case.

7. Thus, the matter falls for consideration as to whether the complaint petition and the statement made by the witnesses in course of enquiry does constitute offence under which cognizance has been taken?

8. It be stated that on the allegation made in the complaint that the petitioner and the security men compelled him to write an application for pre mature retirement cognizance has been taken under Sections 342, 347, 504 and 506 of the Indian Penal Code. Thus, the first and foremost point is as to whether offence u/s 387 of the

Indian Penal Code, in the background of the allegation taken to be true is made out.

9. In this respect one needs to take notice of the provision as contained in Section 387 of the Indian Penal Code which reads as under:

387- Putting person in fear of death or of grievous hurt in order to commit extortion
Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any, other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

10. Having gone through the said provision it does appear that for constituting such offence there ought to be some visible overt act which may reflect the natural and normal inference that the wrong doer had, in fact, put a person in fear of death or of grievous hurt. In absence of any apparent overt act leading towards the act of extortion it cannot be said to be an offence committed for extortion by threat. It may further be stated that without any visible sign of physical act, simple use of word is not enough to constitute that offence in absence of any physical act on the part of the accused or any such material which may indicate that as a matter of fact the accused had practised extortion by threat of fear or death.

11. But in the instant case main ingredient as indicated above is completely lacking. In this regard, I may refer to relevant part of the statement made in paragraphs 3, 4 and 5 of the complaint which reads as follows:

That on 28.9.2000 which was a Thursday and was holiday for the complainant, and suddenly at about 12 O'clock the complainant got an information through telephone from Dr. G.K. Lath, and the complainant was asked to come for urgent work at about 3.30 P.M. at his office and accordingly he went to the chamber of the Dr. G.K. Lath, Jamshedpur, Tata Main Hospital at about 3 and found from before there were 5/6 security men were present at the office of Dr. G.K. Lath..

That as soon as he entered into office of the opposite party No. 2, the door was closed from inside by the security staff and they asked the complainant to follow the direction of Dr. Lath.

The complainant became afraid and nervous and requested to Dr. Lath to allow him to leave the office but that was not allowed and he was directed to sign on two papers which were found to be his dismissal from the service and also asking for voluntary retirement. He was also abused by the security staff in a filthy language. It is also alleged that the petitioner is alleged to have told the complainant that this was being done on the directions of Dr. JJ. Irani and Arun Narayan Singh.

12. On perusal of it, one does find that nothing has been mentioned at all about the physical act, rather it has simply been said that he was compelled to right down and under this situation, it can hardly be said that the petitioner practiced extortion by threat or fear of death and hurt.

13. In the background of the allegation which I have noticed above, no other offence including the offence of criminal intimidation or intentional insult as contemplated u/s 506 and 504 is made out. The petitioner has never been alleged to have held out threat with a declaration of an intention to inflict injury to a person reputation or property of an individual or group of individual nor the petitioner has been alleged to have insulted the respondent No. 2 with an intend to provoke breach of peace.

14. For the reason discussed above, I do find that the materials on which prosecution has been launched against the petitioner do lack the ingredients of the offences under which cognizance has been taken.

15. At this stage, it would be apt to refer to a case of State of Karnataka Vs. L. Muniswamy and Others, where when the Hon"ble Court did find that there was no material on the record on which any court could reasonably convict the accused for any offence came to the conclusion that it would be a sheer waste of public time and money to permit the proceedings to continue against the accused. In that regard the Hon"ble Court observed:

The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution.

16. Therefore, it was quite erroneous on the part of the courts below to hold that prima facie materials are there to constitute offence under Sections 342, 347, 387, 504 and 506 of the Indian Penal Code.

17. In that view of the matter, the orders which are impugned refusing to discharge the petitioner from the case are hereby set aside.

18. In the result, this application is allowed.