

(2009) 04 JH CK 0031**Jharkhand High Court****Case No:** None

Niranjan Lal Mahajan

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: April 27, 2009**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 323, 341, 379, 380, 381
- Probation of Offenders Act, 1958 - Section 3, 4

Hon'ble Judges: Dilip kumar sinha, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

D.K. Sinha, J.

The petitioner has preferred this Cr. Revision against the order impugned passed by Shri Santosh Kumar, Judicial Magistrate, 1st Class, Hazaribagh in Complaint Case No. 208 of 2006 corresponding to T.R. No. 501 of 2008 whereby the Court having taken the lenient view, released the accused i.e. O.P. Nos. 3 & 4 after according them benefit u/s 3 of the Probation of Offenders Act though they were convicted under Sections 323 and 341 IPC and at the same time acquitted the O.P. No. 2 Babla Nandi.

2. The prosecution story in short, as presented by the complainant-petitioner herein before the court below, was that he was the owner of a hotel named and styled as "Mahajan Palace", a residential hotel which included marriage hall. On 10.01.2006 the accused O.P. No. 2 (Babla Nandi) approached the petitioner and took 5 rooms with marriage hall on rent against certain advance for two days from 20.02.2006 to 22.02.2006. After celebration of the marriage, the rooms and the hall of the hotel were to be checked out on 22.02.2006 at 11.00 a.m. but it could not be by the O.P. No. 2 though the complainant alleged that the same were booked to another customer. When the complainant-petitioner demanded the additional rent for the

extended period of occupation of rooms and hall, it was alleged that he was threatened and assaulted at the hands of the members of the Opposite Party No. 2, 3 and 4 with fists and slaps, causing injuries in his right eye. His life could be saved with the intervention of the witnesses. He lodged a written complaint at the Sadar Police Station, Hazaribagh and was sent to the Sadar Hospital for treatment and from there he was referred to RIMS, Ranchi. The complainant explained that as he was unable to move to Ranchi, he consulted Dr. Sujay Samanta, an eye specialist at Hazaribagh itself on 26.02.2006 and only after 7 months he went to Ranchi where his eyes were treated. The complainant expressed his agony that though his hotel was situated opposite the Sadar Police Station but no action was taken by the police against the accused persons, hence the complaint on 07.03.2006 before the C.J.M. The Court after enquiry took cognizance of the offence under Sections 341/323 I.P.C. against the Opposite Party Nos. 2, 3 & 4 and they were put on trial. The complainant adduced evidence and the Trial Court having been satisfied with the materials on the record convicted only two accused namely Jitendra Nath Nandi and Shubhindu Nandi for the charge under Sections 341 & 323 I.P.C. whereas Babla Nandi was acquitted. The grievance of the complainant-petitioner was that the accused O.P.No.3 and 4 were convicted but could not be adequately sentenced for their misdeeds as they had brutally assaulted him causing injuries in his eyes and their release on admonition seriously caused denial of justice and hence the petitioner-complainant challenged the order after their conviction recorded by the Trial Court by which the convicts were released on admonition as no substantial justice could be met out.

3. Learned A.P.P. submitted that on appreciation of the evidence adduced on behalf of the complainant and having been satisfied with the materials on the record, the Trial Court convicted the accused Jitendra Nath Nandi and Shubhindu Nandi i.e. the O.P. No. 3 and 4 for the said charge but by recording detailed reasons, the Trial Court preferred to release them on admonition by extending benefit enshrined u/s 3 of the Probation of Offenders Act It was held that the accused being the first offenders of the offence and the offence being trivial in nature and that the occurrence had taken place on sudden provocation, the Trial Court took a lenient view on the ground that one of the convicts was Medical Representative whereas another was young man and both of them undertook that they would be careful in future and would not repeat the occurrence.

4. Having heard the learned Counsels for the parties and perused the judgment impugned, I am in agreement with the view taken by the Trial Court that the occurrence took place on sudden provocation and on passion of heat, preceded by hot exchange of words and altercation. I find that there was lack of pre-meditation and mensrea and no criminal antecedent was reported against the accused persons, therefore, the Trial Court was justified in arriving at such observation. The learned Counsel for the petitioner-complainant failed to show any ground so as to call for interference in the order of sentence recorded by the Trial Court.

5. It is relevant to quote the provisions of Section 3 of the Probation of Offenders Act, 1958 for more clarity and I find that the member of Opposite Party fulfill such criteria for admonition.

Section-3 Power of Court to release certain offenders after admonition..-

When any person is found guilty of having committed an offence punishable u/s 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with Imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code, or any other law, and no previous conviction is proved against him and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case Including the nature of the offence, and the character of the offender, It is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him to any punishment or releasing him on probation of good conduct u/s 4 release him after due admonition.

Explanation: For the purpose of this Section, previous conviction against a person shall Include any previous order made against him under this Section or Section 4.

In the facts and circumstances, I do not find any merit in this Criminal Revision. Hence it is dismissed.