

## Durgawati Devi Vs The State of Bihar and Others

**Court:** Patna High Court

**Date of Decision:** Nov. 30, 2012

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 202, 203, 204, 397, 401

**Citation:** (2013) 1 PLJR 662

**Hon'ble Judges:** Birendra Pd. Verma, J

**Bench:** Single Bench

**Advocate:** Ashok Kumar Chaudhary and Anil Kumar Tiwary, for the Appellant; Uma Nath Mishra for the State of Bihar and Mr. Udit Narain Singh and Mrs. Vandana Singh for the Opp. Party Nos. 2 to 4, for the Respondent

### Judgement

@JUDGMENTTAG-ORDER

Birendra Pd. Verma, J.

Re. Interlocutory Application No. 1337 of 2009

1. After having heard the parties and for the reasons disclosed in this interlocutory application seeking condonation of delay, the delay occurred in

filing the main criminal revision application is hereby condoned. Interlocutory application stands disposed of.

Re. Cr. Revision No. 1046 of 2009

2. Heard the parties.

3. The petitioner-complainant, being aggrieved by the order dated 1.12.2008 passed in Complaint Case No. 1265 of 2008 by the learned Judicial

Magistrate, Siwan, dismissing the aforesaid complaint case filed on behalf of the petitioner in exercise of his powers u/s 203 of the Code of

Criminal Procedure, 1973 (for short "Cr.P.C."), has approached this Court under Sections 397 and 401 of the Cr.P.C., questioning the

correctness, validity and propriety of the impugned order.

4. Learned counsel appearing on behalf of the petitioner submits that the learned Judicial Magistrate while passing the impugned order has

exceeded his jurisdiction by taking into consideration the prospective defence of the accused persons in the aforesaid complaint case and,

therefore, according to him, the impugned order, is liable to be set aside by this Court. It is also contended that statements of the witnesses

recorded u/s 202 Cr.P.C. have not been taken into consideration by the learned Magistrate for the purpose of finding out a prima facie case and

for issuance of process against the accused persons u/s 204 Cr.P.C. In support of his above contentions, he has placed reliance on a judgment of

the Hon"ble Apex Court Santhosh Moolya and Another Vs. State of Karnataka, as also the judgments of this Court in the case of Md. Faiyaz

Alam Vs. The State of Bihar and Others, and Tarkeshwar Singh Vs. State of Bihar and Another, .

5. Learned counsel appearing on behalf of the opposite party nos. 2 to 4 has strongly opposed the prayer made on behalf of the petitioner and has

supported the impugned order passed by the learned Judicial Magistrate dismissing the complaint petition filed on behalf of the petitioner.

According to the learned counsel for the accused opposite parties, on plain perusal of the complaint petition no case of rape, as alleged, is made

out against the accused opposite party no. 2, and at best it appears to be a case of consent between the petitioner and accused opposite party no.

2. Other allegations against the accused persons become doubtful due to belated filing of complaint petition by the petitioner. In support of his

above contentions, he has placed reliance on the judgments of the Hon"ble Apex Court in the case of Deelip Singh @ Dilip Kumar Vs. State of

Bihar, and Jayanti Rani Panda Vs. State of West Bengal and Another, .

6. After having heard the parties, this Court finds that the entire matter requires reconsideration by the learned Magistrate. It is true that the

petitioner originally filed a complaint petition on 31.5.2007. In the petition of complaint, the petitioner admitted that she started living in the temple

from May, 2005 at the behest of the accused persons, where she was working as a maid servant and accused opposite party no. 2 is said to be

Mahanth of that temple. However, in the aforesaid petition of complaint, the petitioner has alleged commission of rape on 3.5.2007 and even

thereafter on the assurance given by the opposite party no. 2 to marry her. In the petition of complaint, the petitioner has made an allegation of

assault on 30.5.2007 against all the accused persons. However, the learned Magistrate while passing the impugned order has not at all considered

and discussed the statements/evidence of the witnesses produced on behalf of the petitioner during the course of enquiry in terms of Section 202

Cr.P.C. Not only that, the learned Magistrate has committed an error of record that alleged occurrence of rape had taken place more than a year

earlier and yet no case was filed by the petitioner. The learned Magistrate has further committed an error of record that the occurrence of assault

had also taken place about one year two months earlier and on these findings he has come to a conclusion that the case filed by the complainant-

petitioner was not believable and, therefore, in exercise of his powers u/s 203 Cr.P.C. he has dismissed the petition of complaint.

7. Apparently, the aforesaid findings recorded by the learned Magistrate are contrary to the materials available on the record and contrary to the

claim made in the original petition of complaint vide Annexure-1 filed on behalf of the petitioner. It is apparent that the learned Magistrate has not

correctly and properly assessed the materials available on record either for issuance of process in terms of Section 204 Cr.P.C. against the

accused persons or for the purpose of dismissing the petition of complaint in exercise of his powers u/s 203 Cr.P.C.

8. In the result, the impugned order dated 1.12.2008 passed by the learned Judicial Magistrate, Siwan, in Complaint Case No. 1265 of 2008 is

hereby set aside and the matter is remanded back to the learned Judicial Magistrate, Siwan, for reconsideration of the entire matter and for passing

a fresh order strictly in accordance with law.

9. Since the matter is pending since long, it is expected that fresh order shall be passed by the learned Magistrate within a maximum period of three

months from the date of receipt/production of a copy of this order. It is also clarified that at that stage the accused persons are not required to be

heard and the learned Magistrate shall pass fresh order on the basis of materials available on the record strictly in accordance with law. The

application stands finally disposed of.