

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. M. P. No.605 of 2003

1. Kalewar Prasad Rai, son of Late Dani Prasad Rai.
2. Kamdeo Prasad Rai, son of Panchanand Rai.
3. Maheshwari Prasad Rai, son of Arjun Prasad.
4. Panchanand Prasad Rai, son of Late Bhagwan Prasad Rai.

All resident of village Baradah, P.O. Birajpur, P.S. Palajori, District Deoghar.

..... Petitioners.

-Versus-

1. The State of Jharkhand.
2. Suma Devi, wife of Kapil Rajwar, resident of village Waradaha, P.S. Palajori, District Deoghar.

.....Opposite Parties.

CORAM : HON'BLE MR. JUSTICE D. N. UPADHYAY

For the Petitioners	:	Mr. Pandey Neeraj Rai, Advocate
For the State	:	Mr. Ashok Kumar, A.P.P.

CAV on 10th July, 2015 Pronounced on 16th July, 2015

D.N. UPADHYAY: This petition has been filed for quashing the entire criminal prosecution, arising out of P.C.R. Case No.311 of 2002, T.R. No.371 of 2003, registered under Sections 376, 323 and 34 of the Indian Penal Code and the order dated 11th February, 2003, whereby learned Magistrate has ordered to issue process against accused persons to face trial.

2. The fact, in brief, is that a written report was lodged by the complainant against the petitioners. On the basis of said written report, District- Deoghar, Sub Division- Madhupur, Palajori P.S. Case No.89 of 2001 dated 18th December, 2001 was registered under Sections 341, 323, 448, 376 and 34 of the Indian Penal Code and investigation proceeded ahead.

3. When the informant felt that investigation is not proceeding fairly and impartially, she filed protest petition, raising her grievance with a prayer to keep the protest petition for future reference.

It is alleged by the complainant that accused-Siyaram Kumar Rai, finding the complainant alone, entered into the house and committed rape on her. The alarm raised by the complainant attracted to her sister-in-law (GOTANI), who bolted the accused-Siyaram Kumar Rai inside the house and locked the door. Thereafter, remaining accused persons

reached to the place and caused assault to the husband of the victim and got Siyaram Kumar Rai relieved.

The police after due investigation submitted final report, stating the occurrence untrue, but the learned Magistrate considered the protest petition as a complaint, initiated enquiry and took cognizance vide order dated 11th February, 2003 and directed to issue summons against accused persons.

4. The petitioners have challenged the criminal prosecution as well as the order impugned mainly on the following grounds:-

- (i) Protest petition filed by the complainant does not fulfill the requirement of Section 2(d) Cr.P.C. in which the complaint has been defined;
- (ii) There is allegation against accused-Siyaram Kumar Rai that he has committed rape, but the learned Magistrate has taken cognizance under Sections 376, 323 and 34 of the Indian Penal Code against all accused persons, including these petitioners;
- (iii) No offence under Sections 323 and 34 of the Indian Penal Code is made out because the contentions made by the complainant and witnesses do not attract the ingredient of Section 319 of the Indian Penal Code in which the word 'Hurt' is defined;
- (iv) The occurrence is not supported by medical evidence; and
- (v) The statements of witnesses are contradictory.

5. Learned counsel appearing for the petitioners has relied upon the judgment rendered in the case of **Rameshwar Prasad Vs. Bhatu Mahton & Ors., reported in 1958 Cr. L.J.71=AIR 1958 Patna 11 (V 45 C 8)**.

6. Learned counsel appearing for the State has opposed the argument advanced on behalf of the petitioners and submitted that the learned Magistrate has taken cognizance after considering the statements of the complainant and witnesses recorded during enquiry. The order impugned is

well reasoned and that needs no interference.

7. To answer the first point raised by learned counsel for the petitioners, Section 2(d) Cr.P.C. is reproduced herein below:-

“2. Definitions.- (d) “complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.”

For better understanding the definition is to be read by parting the sentence. The first requirement for a complaint is that there must be allegation made orally or in writing to a Magistrate. So, there must be allegation levelled either orally or in writing, meaning thereby “allegation” must be levelled. The second part of the definition suggests that purpose of levelling allegation is to be with a view that action may be taken under this Code. The third part indicates that action is required to be taken against a person whether known or unknown who has committed an offence. The fourth part excludes a police report.

8. Now coming to the facts available in the case at hand, the informant-Opposite Party No.2 lodged a written report with Madhupur Sub-division Palajori police station on 18th December, 2001, alleging therein that accused-Siyaram Kumar Rai suddenly entered into her house and committed rape on her. Considering the un-towards situation, child of the informant started crying loudly and that attracted her sister-in-law (GOTANI). She bolted the accused inside the house and raised alarm which attracted husband of the victim and villagers. In the meantime, companion accused, who are also named in the first information report, armed with Lathi, stick etc., reached to the place, broke open the door and got Siyaram Kumar Rai relieved. They also caused assault to husband of the victim.

On the basis of said written report, Madhupur Palajori P.S. Case No.89 of 2001 under Sections 341, 323, 448, 376 and 34 of the Indian Penal Code was registered.

9. The informant was not satisfied with the investigation done. Apprehending unfairness in the investigation and

favouritism to the accused, she made her protest in writing by filing a petition on 17th January, 2002 in the court of learned Sub Divisional Judicial Magistrate, Madhupur at Deoghar. In the aforesaid petition, prayer was made to keep the petition on record for future use and reference.

The names of all five accused, names of witnesses, date, time and place of occurrence find mentioned in that petition. The conduct of Investigating Officer as well as highhandedness of the accused persons have been indicated.

The purpose of filing of said petition was that the informant-victim must be heard, if it is required. Therefore, the petition dated 17th January, 2002 was filed in continuance to the written report lodged by her on 18th December, 2001. This petition cannot be read in isolation, rather it is in continuation of written report lodged.

10. The informant had lodged a written report, on the basis of which Madhupur Palajori P.S. Case No.89 of 2001 dated 18th December, 2001 was registered. Since the written report was considered as First Information Report in a cognizable offence, the informant has acquired a right to have copy of the information as recorded under sub-section (1) of Section 154 Cr.P.C., which shall be given forthwith free of cost to the informant. Therefore, in a police case, the informant has a right to have copy of the first information report free of cost. After registration of a case under Section 154 Cr.P.C., the police officer is empowered to investigate into cognizable cases under Section 156 Cr.P.C. and procedure for investigation is also indicated in Section 157 Cr.P.C.

11. Here in the case at hand, I am discussing the right of the informant in a police case. The provisions referred to above are for the purpose of interest and right of the informant because he is aggrieved. He is very much concerned with what action is initiated by the officer-in-charge of the police station on the basis of the First Information Report lodged by him. No sooner he lodges the First Information Report, a copy of it has to be supplied to him, free of cost, under sub-section (2) of Section 154. If, notwithstanding the First Information Report, the officer-in-

charge of a police station decides not to investigate the case on the view that there is no sufficient ground for entering on an investigation, he is required under sub-section (2) of Section 157 to notify to the informant the fact that he is not going to investigate the case or cause it to be investigated. Then again, the officer-in-charge of a police station is obligated under sub-section (2)(ii) of Section 173 to communicate the action taken by him to the informant and the report forwarded by him to the Magistrate under sub-section (2)(i) has therefore to be supplied by him to the informant.

12. This Court in Para-15 of the judgment rendered in the case of **Ram Naresh Prasad Vs. The State of Jharkhand & Ors., reported in 2014(3) JLR 94**, has observed as follows:-

“15.

In a case lodged on a police report if the result of the investigation, as indicated above, in the provision under Section 173(2)(ii) is not brought to the notice of the informant, he would not be in a position to raise his grievance if he is aggrieved with the result of the investigation. The informant has every right to raise voice against faulty and perfunctory investigation if done by the I.O. and the stage to ventilate such grievance comes only after submission of final form. The informant has right to make protest and the protest so made in writing can be considered as a Protest-cum-Complaint and then the Court shall have to adopt procedure of a complaint case and for that, procedure contained under Chapter XV of the Cr.P.C. is to be complied with.”

The view taken by this Court finds strengthen from the judgment rendered by the Hon'ble Supreme Court in the case of **Bhagwant Singh Vs. Commissioner of Police & Anr., reported in (1985)2 SCC 537**.

Needless to mention that a copy of the judgment rendered in the case of **Bhagwant Singh (Supra)** was directed to be circulated amongst Magistrates in the whole of the country. Hon'ble Supreme Court has considered the principle of natural justice and held that- in a police case after completion of investigation final form is submitted and the Magistrate is of the opinion to drop the proceeding, he must give an opportunity of hearing to the informant or the aggrieved, so that the informant or the aggrieved would get

an opportunity to ventilate his grievances. At this juncture, the informant files protest petition and that can always be treated as a complaint and proceeded with in terms of Chapter-XV of the Cr.P.C. This view finds support from Para-19 of the judgment of the Hon'ble Supreme Court in the case of ***Shivshankar Singh Vs. State of Bihar & Anr., reported in (2012)1 SCC 130.*** Para-19 of the said judgment reads as under:-

“19. The protest petition can always be treated as a complaint and proceeded with in terms of Chapter XV Cr.P.C. Therefore, in case there is no bar to entertain a second complaint on the same facts, in exceptional circumstances, the second protest petition can also similarly be entertained only under exceptional circumstances. In case the first protest petition has been filed without furnishing the full facts/particulars necessary to decide the case, and prior to its entertainment by the Court, a fresh protest petition is filed giving full details, we fail to understand as to why it should not be maintainable.”

13. In the preceding paragraph, I have already observed that petition dated 17th January, 2002 was filed by the informant in continuation of her written report lodged on 18th December, 2001. The informant, on being aggrieved with the manner of investigation, has right to make protest even before final form under Section 173 is submitted. When the final form was submitted disclosing the occurrence untrue, the learned Magistrate has rightly considered the said petition as protest petition and registered a complaint case vide P.C.R. Case No.311 of 2002. The enquiry under Section 202 Cr.P.C. proceeded ahead and after recording statement of the complainant and witnesses, order impugned was passed on 11th February, 2003 by learned Magistrate. Therefore, the protest petition filed by the informant in continuance to written report lodged by her has rightly been considered as protest-cum-complaint and procedure of Chapter-XV of Cr.P.C. has rightly been followed by learned Magistrate. Even in a situation if no protest petition in writing is filed by the informant but he appears before the Court on receipt of a notice served upon him after submission of final form and the Magistrate is of opinion to drop the proceeding instituted upon police report, but the informant gives oral statement

levelling allegation against the accused that the accused has committed the offence and offers to produce his witnesses, the Court shall have to proceed further under Chapter-XV of the Cr.P.C. because complaint can also be made orally as indicated in Section 2(d) of the Cr.P.C.

14. The second point, raised by learned counsel, is that allegation of commission of rape is only against accused-Siyaram Kumar Rai, but the cognizance has been taken under Sections 376, 323 and 34 of the Indian Penal Code against all accused persons. It is made clear that statement recorded during enquiry is to be considered for the purpose of passing an order under Section 203 or 204 Cr.P.C. If the Magistrate on the basis of statement recorded during enquiry is of the opinion not to proceed further, he passes order under Section 203 Cr.P.C. by which the complaint is dismissed. If the Magistrate finds prima facie material to proceed further against accused person(s), he passes order under Section 204 Cr.P.C. by which the accused person(s) is/are directed to face trial. In the order passed under Section 204 Cr.P.C., it is not required to indicate that which of the offence is committed by which of the accused and who is liable to be prosecuted for which of the offence. The purpose of order passed under Section 204 Cr.P.C. is limited to the extent that the Magistrate has considered the statement recorded during enquiry and found prima facie material to proceed further with the trial. At the time of framing of charge, it is to be considered as to which of the accused is liable to be charged for which of the offence on the material available on record. Therefore, I do not find any illegality in the impugned order, if the learned Magistrate has held that “ Thus, I find that prima facie there are sufficient materials to proceed against all the accused persons u/s 376 and 323/34 of I.P.C. The office is, accordingly, directed to issue summons upon all the accused persons under the aforesaid sections. The complainant is further directed to file the necessary requisites within a fortnight”.

15. It was argued that no offence under Sections 323/34 of the Indian Penal Code is made out because no hurt was caused to anyone. The word 'Hurt' is defined in Section 319 of

the Indian Penal Code, which reads as under:-

“319. Hurt.-Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.”

Here in the case at hand, the allegation against remaining accused, except Siyaram Kumar Rai, is that they caused assault to husband of the informant, broke open the door and got Siyaram Kumar Rai relieved. It is clearly stated that husband of the informant was assaulted, The victims of the present case i.e. informant and her husband did not suffer any disease or infirmity due to the said occurrence, but so far bodily pain is concerned that, appears to have sustained by the informant and her husband as well. If a person suffers with pain due to assault, the pain could not be measured on any medical scale. It is a kind of physical discomfort or emotional distress. According to Oxford Dictionary, 'Pain' means “the feelings that you have in your body when you have been hurt or when you are ill/sick”.

In a case punishable under Section 323 of the Indian Penal Code, if hurt is caused, the offence is made out. Any force used against human body may cause pain. In the instant case, the informant was ravished and her husband was assaulted. Therefore, the statement made by the witnesses during enquiry, prima facie, attracts ingredient of offence under Section 323 of the Indian Penal Code against remaining accused and, therefore, the order impugned needs no interference.

16. So far as the point of medical evidence to support the occurrence and contradictory statements of witnesses are concerned, it is a matter to be considered during trial.

17. In view of the discussions made above, the facts appearing in the judgment rendered in the case of **Rameshwar Prasad (Supra)**, as cited by the learned counsel for the petitioner, do not appear to be helpful in the facts and circumstances of the present case.

18. In the result, I do not find any merit in this petition and the same stands dismissed.

(D. N. Upadhyay, J.)