

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS  
CRIMINAL APPEAL NO(s). 1153 OF 2004

SUBRATA DAS Appellant (s)

VERSUS

STATE OF JHARKHAND AND ANR. Respondent(s)

(With office report )

Date: 22/10/2010 This Appeal was called on for judgment today.

Hon'ble Mr. Justice T.S. Thakur pronounced the judgment of the Bench comprising Hon'ble Mr. Justice Markandey Katju and His Lordship.

The appeal is dismissed.

(Inder Pal Singh)  
AR-CUM-PS

(Indu Satija)  
Court Master

Signed reportable judgment is placed on the file.

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.1153 OF 2004

Subrata Das ...Appellant

Versus

State of Jharkhand & Anr. ...Respondents

J U D G M E N T

T.S. THAKUR, J.

1. This appeal by special leave arises out of an order passed by the High Court of Jharkhand at Ranchi whereby a petition under Section 482 Cr.P.C. filed by the appellant has been dismissed and an

order dated 20th March, 2003 passed in Criminal Revision No.229 of 2002 by the Additional Sessions Judge, Dhanbad upheld. The High Court has taken the view that since two Courts below had concurrently held that a prima facie case under Sections 341, 323 and 506 IPC and Sections 3(i)(x) and 2(vii) of the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 had been made out against the petitioner (appellant herein) it was not a fit case in which the proceedings before the Magistrate could be quashed. The controversy arises in the following backdrop:

2. A complaint was filed by the complainant-respondent No.2 herein before the Chief Judicial Magistrate, Dhanbad against the appellant and one Shri D.B. Raman, Manager of TISCO Jamadoba Colliery, district Dhanbad alleging commission of offences punishable under Sections 341, 323, 506 and 384 IPC and Sections 3(1) & (2) (vii) of the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989. Statements of the complainant and three other witnesses, Anil Bhagti, Ram Prasad and Krishna Mandal were recorded by the Court in support of the complaint. The Chief Judicial Magistrate, however, came to the conclusion that none of the allegations made against the accused were proved to be correct to call for action on the basis thereof. The complaint was accordingly dismissed.

3. Aggrieved by the dismissal of his case, the complainant filed a revision before the 5th Additional Sessions Judge, Dhanbad who examined the matter at length including the evidence on record and came to the conclusion that a prima facie case had indeed been made out by the complainant against the accused. The order passed by the Chief Judicial Magistrate was accordingly set aside and the matter remanded back to the Chief Judicial Magistrate, Dhanbad for "reviewing the same afresh" after going into the details of evidence on record and the relevant provisions of law. A revision was then filed by the accused including the appellant herein before the High Court of Jharkhand at Ranchi, in which it was, inter alia, contended that since the Chief Judicial Magistrate had no power to review his own orders the direction issued by the 5th Additional Sessions Judge, Dhanbad, was legally erroneous. The High Court, however, clarified that the directions issued by the 5th Additional Sessions Judge was a direction for a further enquiry to be conducted by the Chief Judicial Magistrate under Section 398 Cr.P.C.

4. When the matter went back to the Chief Judicial Magistrate he recorded the depositions of the complainant as also the witnesses afresh and came to the conclusion that a prima facie case under the provisions referred to above has been made out against the accused persons. Summons were accordingly directed to be issued to the accused persons. Aggrieved whereof the appellant filed a revision petition before the Additional Sessions Judge which failed and was dismissed, inter alia, holding that the material on record before the Court below did make out a prima facie case against the accused persons and that there was no legal infirmity in the order directing issue of summons to the accused persons. The appellant preferred a petition under Section 482 of Cr.P.C. before the High Court of Jharkhand, Ranchi which was dismissed by the High Court by the order impugned in this appeal.

5. We have heard learned counsel for the parties, but find no reason to interfere with the order under challenge. It is fairly well-settled by a long line of decisions rendered by this Court that the power vested in the High Court under Section 482 Cr.P.C. can be invoked for quashing an on-going investigation, complaint or other proceedings only in cases where either there is legal power to the continuance of the proceedings such as the absence of a sanction wherever required or where averments made in the complaint or first information report even if accepted on their face value do not constitute an offence or where there is no legal evidence to support the charge made against the accused. It is also fairly settled that the powers vested in the High Court under Section 482 Cr.P.C. have to be exercised sparingly and that the Court cannot be called upon

to appreciate the available evidence or material with a view to find out whether the charge leveled against the accused stands proved.

6. See Arun Shanker Shukla v. State of U.P. & Ors. AIR 1999 SC 2554, State of Punjab v. Kasturi Lal & Ors. 2004 CrL.L.J. 3866, State of Karnataka v. M. Devendrappa and Anr. (2002) 3 SCC 89 and Central Bureau of Investigation v. K.M. Sharan 2008 (4) SCC 471, State of Haryana & Ors. v. Bhajan Lal & Ors., 1992 Suppl. 1 SCC 335 and R.P. Kapur v. State of Punjab (1960) 3 SCR 388.

7. A plain reading of the complaint filed by the complainant in the instant case makes out a case against the accused. Not only that the depositions of the three witnesses examined by the complainant in support of his complaint also support the allegations made in the complaint. The Magistrate was, therefore, justified in taking cognizance against the appellant and the co-accused. The Revisional Court of Additional Sessions Judge, Dhanbad, was also correct in holding that a case for issue of process has been made out. Such being the position the High Court committed no error in declining to interfere under Section 482 of Cr.P.C. nor is there any reason for us much less a compelling one to take a view different from the one taken by the High Court.

8. Learned counsel for the appellant submitted that the Chief Judicial Magistrate had committed an error in recalling the witnesses and examining them afresh after the matter was remanded back to him for further enquiry. It was contended that the direction for a further enquiry could not be taken to mean that the Magistrate had to record afresh the depositions of the witnesses already examined before him. In as much as the Magistrate had done so in the present case he committed a mistake that was sufficient to vitiate the order passed by him. Support was drawn by the learned counsel from a Single Bench's decision of the High Court of Punjab & Haryana in Gurdial Singh v. Kartar Singh and Ors. 1980 CrL. L.J. 955.

9. The matter as noticed by us earlier had been remanded back to the Chief Judicial Magistrate to hold a further enquiry. That direction did not necessarily oblige the Magistrate to record any further evidence in the case. The nature of the inquiry was in the discretion of the Magistrate which may or may not have included recording of further evidence on behalf of the complainant. The Magistrate could without recording any further evidence in the matter reappraise the averments made in the complaint and the material already on record to determine whether a prima facie case was made out against the accused persons. In as much as the Magistrate in the instant case summoned the witnesses and examined them afresh, he may have gone beyond what was legally necessary to do but that is no reason to hold that the recording of evidence by the Magistrate as a part of the further enquiry directed by the High Court would vitiate the proceedings before him or the conclusion drawn on the basis of any such enquiry. So long as the Magistrate was satisfied that a prima facie case had been made out, he was competent to issue summons to the accused. All told, the alleged error sought to be pointed out by the appellant is not of a kind that would persuade us to interfere with the proceedings at this stage. In the result this appeal fails and is hereby dismissed.

.....J.  
(MARKANDEY KATJU)

.....J.  
(T.S. THAKUR)

New Delhi  
October 22, 2010