

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 1044 of 2014

Lakhicharan Mahato, son of Late Jyoti Mahato, resident of Village- Pilid Tola, Purisai, P.S.- Ichagarh, P.O. Situ, District- Seraikella-Kharswan Petitioner

-Versus-

The State of Jharkhand Opp. Party

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Harendra Kr. Mahato, Advocate

For the State : Mr. Vinay Kumar Tiwary, A.P.P.

Through Video Conferencing

08/29.05.2020

1. Heard the learned counsel for the parties.
2. This criminal revision application has been filed against the judgment dated 24.07.2014 passed in Cr. Appeal No. 29/2011 by the learned Principal District & Sessions Judge, Seraikella-Kharswan, by which the conviction of the petitioner vide judgment dated 11.04.2011 passed in G.R. Case No. 875/2008 by the learned Chief Judicial Magistrate, Seraikella under Sections 323 and 341 of the Indian Penal Code has been upheld. However, the learned appellate court modified the sentence and released the petitioner on probation on his entering into a bond of Rs. 10,000/- with two sureties of the like amount each with a condition that he will appear and receive the sentence when called upon during the period of two years and in the meantime, the petitioner shall maintain peace and have a good behaviour for a period of two years.
3. The learned counsel for the petitioner submitted that during the pendency of this case, the records of the case was called for from the learned court below, but the petitioner was arrested and he has furnished the bond as directed by the

learned appellate court. However, he submitted that the petitioner has a good case and it may be decided on merits.

4. He further submitted that the petitioner could not have been convicted under Section 341 of IPC as the place of occurrence was the land belonging to the petitioner and under such circumstances, no offence under Section 341 of IPC is made out against the petitioner.

5. The learned counsel, referring to Section 323 of IPC, submitted that Section 323 of IPC has an exception which refers to Section 334 of IPC. He further referred to Section 334 of IPC which deals with voluntarily causing hurt on provocation. The learned counsel submitted that the Informant party had gone to the land of the petitioner for digging and therefore, there was provocation to the petitioner under Section 334 of IPC and in such circumstances, none of the essential ingredients of Section 323 of Indian Penal Code is fulfilled against the petitioner in the present case and so, no case under Section 323 of IPC is made out against the petitioner.

6. The learned counsel referring to Para-10 of the appellate court's judgment further submitted that it has come in the evidence of the Investigating Officer that the land does not belong to the Informant and accordingly, there was provocation from the side of the Informant due to which the offence under Section 323 of IPC is not made out against the petitioner. However, during the course of hearing of this case, the learned counsel for the petitioner could not point any finding recorded by any of the courts below that the land belonged to the petitioner. The learned counsel also submitted that the Doctor has not been examined and the injury report has not been proved and therefore, otherwise also, the offence under Section 323 of IPC is not made out against the petitioner.

7. The learned A.P.P. appearing for the State, on the other hand, submitted that there are concurrent findings in connection with the offences committed under Sections 323 and 341 of Indian Penal Code and considering the limited scope of revisional jurisdiction, there is no scope for re-appreciation of evidence by the revisional court and as such, there is no scope for interference. The learned A.P.P. further submitted that there is no finding by the learned courts below that the place of occurrence is the land belonging to the petitioner. He submitted that the basic ingredients of Sections 323 and 341 of IPC having been satisfied, the petitioner has been rightly convicted under Sections 323 and 341 of IPC and there is no merit in the present criminal revision application which may be dismissed accordingly. He also submitted that the learned appellate court has taken a lenient view and has already modified the sentence.

8. After hearing the learned counsel for the parties, this Court finds that the learned trial court after recording the evidences in the impugned judgement has found that P.W-6, who is the Informant of the case and also the injured witness as well as other independent witnesses i.e. P.Ws.-1, 2 and 3 have supported the prosecution case by deposing that the petitioner had assaulted on the head of the Informant by wooden stick and due to which he received injury and bleeding started. The learned trial court was also of the view that although the doctor has not been examined, the I.O. has deposed that he had seen the Informant with injury on his head covered with bandages. It has also been recorded that the I.O. had proved the place of occurrence as situated near the school of the village. It has been recorded by the learned trial court that the Informant has clearly deposed that on the date of occurrence in the evening, the construction of the school was going on and the Informant with the co-villagers were digging the plinth of the school and

the accused (petitioner) objected to the same and assaulted the Informant in presence of the villagers. The learned trial court sentenced the petitioner to undergo S.I. for six months under Section of 323 IPC and S.I. for one month under Section of 341 IPC and both the sentences were directed to run concurrently. The learned appellate court has independently considered the evidences on record and has upheld the conviction of the petitioner by recording a finding in Para-14 that P.Ws.-1, 2, 3, 4 and 6 are eye-witnesses to the occurrence and there is no major contradictions in their evidences, although they were cross examined at length by the defence with regard to time, place and manner of occurrence. The learned appellant court has also considered the plea of non-examination of the doctor. The learned appellate court has *inter alia* recorded the findings in Paras- 15 and 16 of the judgment as follows :-

"15. At the time of argument, learned lawyer for the appellant has submitted that the doctor has not been produced by the prosecution that's why it would fatal to the prosecution case. Of course, the doctor has not been produced by the prosecution in this case. But so far the evidence of doctor is concerned, it is not substantial evidence, rather it is a corroborative evidence. This is a case u/s 341 & 323 I.P.C. So far as the offence u/s 323 I.P.C is concerned, there is no need to examine the doctor whenever the evidence of the witnesses are consistent and almost all the witnesses, they have fully supported and corroborated the facts as alleged by the prosecution. The evidence of the doctor is not substantial evidence only it is corroborative evidence. Moreover, I have already observed that this is a case u/s 323 I.P.C that's why in such cases, non-examination of the doctor could not fatal to the prosecution case where there is direct allegation against the accused. Almost all the witnesses they are eye-witnesses and they

have fully supported the case as such non-examination of the doctor could not fatal to the prosecution. Even the I.O has seen the injuries on the Informant and he issued memo of injury. Moreover, non-examination of the doctor, the appellant, anyhow, could not prejudiced for the reason that the witnesses are eye-witnesses and there is consistencies amongst the evidence of P.Ws. Moreover, other witnesses, they have fully supported and corroborated the facts as alleged by the prosecution.

16. *So far as the offence punishable u/s 341 I.P.C is concerned, there appears that most of the witnesses they have supported the fact that the appellant came at the place of occurrence and started assaulting the Informant, as a result of which, the Informant could not free from the clutches of the accused/appellant, as such he was wrongfully restrained by the accused, as a result of which he could not proceed in any direction in which that person had right to proceed. As such, the ingredient of section 341 I.P.C is well proved by the prosecution."*

9. Although it has been argued by the learned counsel for the petitioner that the land involved in this case belongs to the petitioner, but from perusal of the judgment passed by both the courts below, there is no finding that the place of occurrence belonged to the accused (petitioner) and it has been simply stated by the Investigating Officer that the land did not belong to the Informant. This Court has gone through the statements of the petitioner recorded under Section 313 of Cr.PC. in which the petitioner has simply denied the incriminating evidences put to him and he has neither given any explanation, nor has led any evidence in defence. In absence of any such finding or evidence that the place of occurrence land belonged to the petitioner, the argument of the learned counsel for the petitioner that the

Informant of the case was the aggressor and he had entered upon the land of the petitioner has no bearing in the matter. Accordingly, the argument of the learned counsel for petitioner that the case of the petitioner comes under the exception under Section of 334 of IPC and that there was provocation on the part of the Informant is hereby rejected. Further, there is no finding or evidence of any provocation from the side of the Informant.

10. This Court does not find any illegality or perversity in the impugned judgments of conviction of the petitioner passed by the learned courts below calling for any interference in revisional jurisdiction. Further, the learned appellate court has already taken a lenient view and has modified the sentence of the petitioner releasing him on probation.

11. Accordingly, this criminal revision application is hereby **dismissed.**

12. Interim order, if any, stands vacated.

13. Pending interlocutory applications, if any, are also dismissed as not pressed.

14. Let a copy of this order be communicated to the learned court below through 'FAX/email'.

15. Let the lower court records of the case be remitted back to the court concerned.

(Anubha Rawat Choudhary, J.)

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