

04/07/2016

Shri ML Yadav, Advocate for the petitioner.

Shri AS Rathore Panel Lawyer for the respondent/State.

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The revisional powers of this Court u/S 397 read with Sec 401 Cr.P.C. are invoked to assail the revisional order dated 30.12.2010 passed by Second Additional Sessions Judge, Mungawali, District Ashoknagar (M.P.) in Case No. 93/2010 allowing the revision filed by the accused/respondent no.2 herein against the order dated 30.12.2010 by which cognizance was taken by the learned Magistrate for offence punishable u/S 354 of IPC against accused/respondent no.2 herein.

2. The present revision has been filed by the complainant prosecutrix Bharti.

3. Learned counsel for the rival parties are heard on the question of admission.

4. The facts disclosed herein are that on 21.04.2010, the prosecutrix at about 10 PM in the night was searching for her husband when she arrived at the well of the accused Ramcharan Patel situated on the periphery of the village Morgakalan, Police Station Koparia, District Ashoknagar, where the husband of the prosecutrix used to visit frequently to have liquor with some of his friends. The prosecutrix heard 8 to 10 people talking. Prosecutrix called out for her husband. On hearing the voice of prosecutrix Ramcharan Patel appeared. When the prosecutrix asked accused Ramcharan Patel for the whereabouts of her husband he caught hold her hand. On being objected to by the prosecutrix, the said accused offered money to the prosecutrix. On this the prosecutrix asked the accused to leave her and cried for help but to no avail.

Thereafter, the prosecutrix alleges that accused embraced her and she was thrown to the ground whereafter she ran away from the spot. On reaching home, the prosecutrix informed the incident to her brother-in-law (Jeth) Shayam Lal that the accused Ramcharan Patel tried to outrage her modesty. One Rajesh is said to have witnessed the incident. Thereafter the incident was reported to the police but since no FIR was lodged a criminal complaint was filed before competent Court of criminal jurisdiction by the prosecutrix which was followed by recording of statement of prosecutrix in August, 2010 Shayam and Rajesh on 10.09.2010. Thereafter, by the order dated 21.10.2010 the trial Court found that prima facie offence punishable under Section 354 of IPC appears to be made out and directed the prosecutrix to pay PF so that summons could be issued to the accused.

5. Aggrieved, the accused approached the Revisional Court of ASJ, Mungawali, District Ashoknagar (M.P) by filing revision which has been allowed by the impugned order dated 30.12.2010 by recording finding that no offence u/S 354 IPC is made out for the following reasons:-

1. the contents of the written complaint dated 21.04.2010, 04.05.2010 and 19.05.2010 preferred by the prosecutrix to the police authorities are writ large with contradictions regarding the incident.
2. the statement of prosecutrix u/S 202 Cr.P.C., disclosed that when she was thrown to the ground by the accused she cried for help in response to which the accused offered her RS.20,000/- for remaining quite and yielding to his sexual advances. The first revisional court noticed that these allegations are not contained in the written

complaint filed before the Magistrate.

3. Written complaint under Section 200 of Cr.P.C. of the prosecutrix interalia reveals that immediately after the incident she went her home and disclosed the incident to her brother-in-law (Jeth) Shyamlal whereas Shaymlal in his statement recorded under Section 202 of Cr.P.C. disclosed that the prosecutrix informed him about the incident the next day in the morning.
4. The statement of the prosecutrix under Section 202 of Cr.P.C. Interaila is to the extent that the incident was witnessed by Rajesh who had stated on seeing the incident that "Ghalat Kaam kar rahe ho?". Whereas witness Rajesh in his statement under Section 202 of Cr.P.C., does not say so.
5. On an inquiry conducted by the police on the instruction of the Magistrate, it was revealed that there was rivalry between the accused and the prosecutrix arising out of dispute in Panchayat elections.
6. The question that falls for consideration before this Court is as to whether improvements, contradictions and embellishments found in the contents of the written complaint u/S. 200 of Cr.P.C. and the statements of various witnesses recorded u/S. 202 Cr.P.C are sufficient to throw out the case of the prosecutrix at the threshold or not.
 - 6.1. The judicial scrutiny which is required to be undertaken by the trial court at the stage of taking cognizance in complaint filed under Section 200 Cr.P.C. is based upon the allegations contained in the complaint and the supportive statements of the complainant and the witnesses recorded under Section 202 of Cr.P.C.

6.2. The trial Court has to arrive at satisfaction that prima facie essential ingredients of offence are made out for taking cognizance to direct the proposed accused to come forward to record his statement. The exercise is to be undertaken by the trial court at the stage of taking cognizance is somewhat akin to the exercised undertaken by the police under Section 154 Cr.P.C.

6.3. Section 154 Cr.P.C. obliges the police to register the offence if information furnished discloses commission of cognizable offence. The police have no authority to dwell into the veracity or probative value of the allegations.

6.4. Though the material available with the police while exercising its powers under Section 154 of Cr.P.C. is much limited than the material available with the Magistrate while exercising powers u/S. 204 of Cr.P.C. The reason is obvious as the police merely has the oral or written information regarding commission of cognizable offence whereas the Magistrate not only has the written complaint containing the allegations of commission of offence but also supportive statements of the witnesses who depose in support of the complaint.

6.5. The Magistrate thus while exercising its power under Section 204 of Cr.P.C. is required to ensure that there is sufficient ground to proceed to issue summons to the police. The term "sufficient ground" is nothing but the satisfaction of the Magistrate that essential ingredients of the offence alleged are made out from the reading of the allegations contained in the complaint u/S.200 Cr.P.C. and the supporting statements under Section 202 Cr.P.C.

6.6. Accordingly the degree of satisfaction of the Magistrate in

regard to commission of offence alleged is more than the degree of satisfaction required by the police while exercising its powers under Section 154 Cr.P.C. but less than the degree of satisfaction required by the trial court while framing of charge.

6.7. On the anvil of the abovesaid discussion in regard to scope of judicial scrutiny required to be undertaken by the trial court to arrive at its satisfaction about taking cognizance of offence alleged in a complaint filed under Section 202 Cr.P.C., the factual matrix containing in the present case are required to be decided.

6.8. For convenience and ready reference , it would be apt to reproduce relevant section ;

Sec 354 IPC. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

6.9. A plain reading of the above provision disclosed the following basic ingredients :-

1. Assault or use of criminal force against a woman ;
2. With an intention to outrage or knowing it to be likely that offender will thereby outrage her modesty.

The first ingredient merely contemplates assault or use of criminal force. Assault has been defined under Section 351 IPC is as follows ;

351 of IPC Assault.—Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault. Explanation.—Mere words do

not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Criminal force is defined u/S. 350 IPC which is reproduced below ;

350 IPC Criminal force.—Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other

6.10. A comparative analysis of Section 350 and Section 351 discloses that criminal force is a specie whereas assault is genus. A criminal force is part of assault. An assault can take place without exercise of criminal force. However criminal force can exist independent of an assault.

7. In the instant case written complaint u/S. 200 Cr.P.C. dated 26.05.2010 filed by the prosecutrix inter-alia discloses that when the prosecutrix arrived at the scene of crime at about 10 PM in the night on 20.04.2010 and asked about the whereabouts of her husband, the accused Ramcharan Patel caught hold of her and tried to misbehave with her and asked her not to cry for help by offering money to her. The prosecutrix has further stated in the complaint that when she resisted and asked the accused to leave her, the accused embraced her and threw her to the ground. Thereafter, the prosecutrix alleges that she struggled and somehow got free and away from the spot.

7.1. Without dwelling into the statements of other two witnesses Shyamlal and Rajesh under Section 202 Cr.P.C., if the statement of the prosecutrix is seen, the basic ingredients of assault and criminal force as defined u/Ss 351 and 350 of IPC respectively are

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made out. The accused/ respondent No.2, by holding the hand and throwing down the prosecutrix on the ground with lewd intention without the consent of the prosecutrix, exercised criminal force. The allegations prima facie indicate that the intention of the accused/respondent No.2 was to outrage and violate the modesty of the prosecutrix. Thus, from the bare reading of the allegations made in the complaint supported by the statements of the prosecutrix u/S. 200 Cr.P.C., the basic ingredients of offence punishable under Section 354 IPC are made out.

7.2 As regards contradictions, embellishments, and improvements found by the first revisional court while indulging in a comparative assessment of the written complaint under Section 200 Cr.P.C. and the statements of witnesses under Section 202 Cr.P.C., it is needless to emphasize that these elements ought not to be looked into at the stage of taking cognizance which is too early a stage to indulge in the process of evaluation of material/allegations to find out as to whether conviction is possible or not. So long as the basic ingredients of the offence alleged are made out by the written complaint and the statement of the complainant, the contradictions, embellishments and improvements even if they exist in the entire prosecution story ought to be left alone and postponed for being considered at the stage of framing of charge which arises only after the statements of the accused and his witnesses are recorded. The relevant extracts of some decisions of the different courts on the interpretation of term "sufficient ground" found under Section 204 (1) Cr.P.C are extracted below for ready reference and convenience:-

In **R.T. Arashu v. State of U.P.**, reported in **1999 Cr.Lj 4113**

The meaning of the expression "sufficient ground" used in section 204 is that a prima facie case is made out against the accused. The test under this section is whether there is sufficient ground for proceeding and not whether there is sufficient ground

for conviction. If there is prima facie case and the accused may have a defence, in spite of this, the process has to be issued.¹The Magistrate has to be simply satisfied that there are sufficient grounds for proceedings against the accused, and not whether there are sufficient grounds for conviction.²

In **Smt. Nagamma v. Veeranna Shivalingappa Konjalgi.**,
reported in **1976 Cr.Lj 1533**

"At the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case nor the High Court can go into this matter in its revisional jurisdiction which is a very limited one."

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Section 204 only contemplates the issue of process where the Magistrate is satisfied that there is sufficient ground for proceeding. No enquiry by the Magistrate is contemplated at this stage. An extensive discretionary power is conferred on the Magistrate in his capacity as Magistrate and this discretionary power is to be exercised judicially according to rules of reason and justice and the Magistrate must act within the four corners of the Code. The complainant should allege facts, which, if relied upon would constitute the offence charged. All that the Magistrate has to do is to consider the statement on oath and where the matter had been referred to the police for enquiry, the police report as well, and from his own conclusions as to whether there is a prima facie case.³The provisions which enjoin the courts to satisfy themselves about the prima facie nature of a criminal charge, before issuing a process, must be intended, in the absence of a clear suggestion to the contrary, to be mandatory.⁴

8. In view of the observations, factual and legal (supra) this court is of the considered view that the first revisional court has wrongly exercised it's jurisdiction by interfering with the order of taking cognizance passed by the trial court on 21.10.2010.

9. Accordingly, the impugned order of the first revisional Court dated 30.12.2010 passed by Second Additional Sessions Judge, Mungawali, District Ashoknagar (M.P.) in Case No. 93/2010 (Criminal) is hereby set aside thereby restoring the order of taking cognizance of the trial court dated 21.10.2010.

10. Needless to emphasize that the Trial Court shall proceed from the stage where complaint was quashed by the first revisional court.

11 . No cost.

**(Sheel Nagu)
Judge**