

(2023) 09 JH CK 0062

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1539 Of 2014

Ankit Kumar Choudhary

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 20-09-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 300
Indian Penal Code, 1860 — Section 406, 420
Negotiable Instruments Act, 1881 — Section 138

Citation : (2023) 09 JH CK 0062

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : A.K. Kashyap, Dhananjay Kumar Pathak, Shashi Kant Mishra, Prabhu Dayal Agrawal, Nilesh Kumar

Final Decision : Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Heard learned counsel for the parties.
2. This petition has been filed for quashing the entire criminal proceedings in connection with Complaint Case No.119/2019 including the order taking cognizance dated 03.07.2009, pending in the court of the learned Chief Judicial Magistrate, Koderma.
3. Mr. Kashyap, learned senior counsel appearing for the petitioner submits that the petitioner happened to be Director of M/s Tirupati Ingots Private Limited. He further submits that he has already resigned on 30.12.2008 and the complaint case was filed on 18.02.2009 arising out of dishonour of cheque. He also submits that prior to that two cases have already been lodged, which are for same transaction. He submits that in view of that, Section 300 Cr.P.C. is attracted. He further submits that the learned court has taken cognizance against the petitioner under Section 420 and 406 of the Indian Penal Code and Section 138

of the Negotiable Instrument Act, which is bad in law. He submits that the allegation was under Section 138 of the Negotiable Instrument Act and unnecessarily Section 420 and 406 of the Indian Penal Code was added. To buttress his argument, he relied upon the judgment passed by the Hon'ble Supreme Court in the case of J. Vedhasingh v. R.M. Govindan and others, reported in 2022 SCC OnLine SC 1010. He further submits that the company is not made accused and in view of the judgment passed by the Hon'ble Supreme Court in the case of Aneeta Hada v. Godfather Travels and Tours Private Limited, reported in (2012) 5 SCC 661, the case of the petitioner is fit to be allowed.

4. The argument of Mr. Kashyap is being resisted by Mr. Nilesh Kumar, learned counsel for opposite party no.2 and he submits that transaction in other cases are different and the allegations are not similar. He further submits that the occurrence was prior to the period of resignation of the petitioner. He submits that there is no illegality in the order and the learned court has rightly taken cognizance. He also submits that the HT agreement was entered by the petitioner in the year 2004 and the cheque has been issued by the petitioner.

5. In view of the above submissions of the learned counsel for the parties, the court has perused the order dated 03.07.2009 and finds that by the said order, the learned court has taken cognizance against the petitioner and also issued summon against the petitioner. The cognizance has been taken under Section 420 and 406 of the Indian Penal Code and Section 138 of the Negotiable Instrument Act. Once the case is arising out of Section 138 of the Negotiable Instrument Act, the question remains how the case under Section 406 and 420 of the Indian Penal Code is made out. Further by the said order, a composite order has been passed. If summoning order is being passed in a common order, at least reason is required to be disclosed in the said order, which is lacking in the case in hand.

6. Accordingly, the order dated 03.07.2009 passed in connection with Complaint Case No.119/2009, pending in the court of the learned Chief Judicial Magistrate, Koderma is set aside. The matter is remitted back to the learned court to pass a fresh order, in accordance with law.

7. Accordingly, this petition is disposed of.

8. Interim order, if any granted by this court, stands vacated.