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**(2006) 03 JH CK 0046**

**In the Jharkhand High Court**

**Case No : Criminal M.P. No. 424 of 2004**

Ashok Kumar Mukhopadhyay

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

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**Date of Decision : 10-03-2006**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 197A, 202, 482  
Penal Code, 1860 (IPC) — Section 323, 34, 341, 379, 384

**Citation : (2006) 3 JCR 151**

**Hon'ble Judges : Dilip kumar sinha, J**

**Bench : Single Bench**

**Advocate : Deepak Kumar Bharti, for the Appellant; M.B. Lal and Anil Kumar for Opposite party No. 2, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

D.K. Sinha, J. 1. The petitioner has preferred this petition u/s 482 of the Code of Criminal Procedure for quashing the cognizance order dated 18.7.2003, passed by Smt. Prem Lata Tripathy, Judicial Magistrate, 1st Class, Bokaro in Complaint Case No. 117 of 2003 for the offence under Sections 341, 323, 373, 385 and 379 of the Indian Penal Code and further proceedings arising out of the order impugned aforesaid.

2. Heard Mr. M.B. Lal, learned Counsel for the State as well as Mr. Anil Kumar on behalf of the opposite party No. 2.

3. The prosecution story, in brief, is that petitioner-accused Ashok Kumar Mukhopadhyay and obtained loan to the turn of Rs. 80.000/- from the informant opposite party No. 2, Santosh Ghoshal on 8.2.2001 but on repeated demand, the lent out money was not returned. The petitioner executed a deed in writing about borrowing the said amount with the promise to return the same on 22.11.2002. But after expiry of the said period when the complainant-opposite party No. 2 repeated his demand to return the said amount, the petitioner made subterfuged the matter on one pretext or another. Ultimately the complainant-opposite party

No. 2 sent a legal notice on 28.4.2003 through registered mail demanding his money. On receipt of legal notice, the petitioner- accused went to the house of complainant-opposite party No. 2 and asked the inmates that the complainant-opposite party No. 2 may collect the said amount on the subsequent date. i.e. on 10.5.2003 from his house situated at Chandankiyari. The matter was conveyed to the complainant and pursuant to that, the complainant-opposite party No. 2 proceeded to the rented house of the accused-petitioner with two witnesses on the Auto-rickshaw on one Sunil Mahto where he found two unknown persons sitting in the house of the accused-petitioner from before. It is alleged that petitioner-accused appeared there with papers and pen and asked complainant-opposite party No. 2 to put his signature thereon on the assurance that he was about to deliver the amount to which opposite party No. 2 resisted and asked him to pay the amount first and only then he would put his signature. It is alleged that the two unknown persons, who were present there from before started compelling opposite party No. 2 to put his signature and on refusal there being made, they started abusing and assaulting him when the witnesses attempted to intervene in the defence of opposite party No. 2, one of the two unknown persons took out dagger from his possession and intimidated by putting it on the neck of the opposite party No. 2 calling upon him to put his signatures on the blank papers otherwise he would be killed. It is alleged that out of fear complainant-opposite party No 2 put his signature on two blank papers to which the accused petitioner took its possession. It is alleged that thereafter complainant was pushed out and in such scuffle the accused-petitioner took out Rs. 200/- from the pocket of the opposite party No. 2 and also removed his wrist watch worth Rs. 250/- and extended threat that he" would be killed in case he demanded his money again and that he was no longer having his money with him.

4. In course of enquiry three witnesses were examined, who supported the allegation as made in the complaint petition by the opposite party No. 2 and being satisfied with such evidence and finding it a prima /acie case, learned Judicial Magistrate took cognizance of the offence under Sections 341, 323, 385 and 379 of the Indian Penal Code against the accused-petitioner. It is relevant to mention that complainant failed to identify and brought the names of the two unknown persons on the record and, therefore, summons was directed to be issued against the sole accused-petitioner.

5. It is submitted on behalf of the petitioner that occurrence as alleged took place on 10.5.2003 whereas the complaint petition was filed on 13.5.2003 after inordinate delay of three days and such delay is no where explained. The complainant failed to establish the identity of two unknown persons and it was no where alleged that it was accused-petitioner who had intimidated the complainant on the dagger point to sign on blank paper, rather the complaint case was brought about is mala fide, and on account of vengeance and personal enmity against the accused-petitioner, who is In-charge Headmaster of a primary local school commanding respect in the locality.

6. Advancing the argument learned Counsel on behalf of the petitioner further submitted that the cognizance of the offence under Sections 341, 323 and 379 are not at all applicable under the facts and circumstances of the case since the case of wrongful restraint, voluntary causing hurt and theft could not be made out and, therefore, it can well be inferred that the Judicial Magistrate did not apply her judicial mind in taking cognizance of the offence, rather it was taken in mechanical and erroneous manner and, therefore, it is fit to be quashed. Finally it has been submitted that no sanction has been obtained from the Government of Jharkhand to proceed against the accused-petitioner, who is a public servant and, therefore, taking of cognizance against the petitioner, is miscarriage of justice and the last, not the least it was submitted that the complainant failed to produce the agreement paper as alleged whereby accused-petitioner has promised to return the alleged amount on certain date.

7. Learned Counsel appearing on behalf of the opposite party No. 2 submitted that learned Judicial Magistrate, Bakaro took the cognizance of the offence against the accused-petitioner on the basis of the statement of the witnesses recorded in course of enquiry u/s 202 of the Code of Criminal Procedure as also on the basis of statement of the complainant-opposite party No. 2 on solemn affirmation, who consistently supported his case.

8. The learned Counsel for the opposite party No. 2 further submitted that it would be evident from perusal of the complaint petition, the certified copy of which is on the record. That the complainant had proposed the offence under Sections 406, 341, 323, 384, 379 and 506/34 of the Indian Penal Code but cognizance of the offence was taken erroneously only under Sections 341, 323, 385 and 379 of the Indian Penal Code, though there was sufficient material that the accused-petitioner with two others in furtherance of common intention had committed the offence and, therefore, learned Judicial Magistrate erred by not introducing Section 34 in the cognizance as sought for. It can well be gathered from the statement of the witnesses that the complainant was wrongfully restrained on the dagger point and was threatened to sign over two blank papers and in this manner offence under Sections 341 and 385 are complete. Removing of his wrist watch from the possession of the complainant and taking out Rs. 200/- from his pocket by the petitioner amounts theft and, therefore, in view of the allegation and evidence that the complainant was pushed and scuffle took place, the said overt act attracts Section 323 of the Indian Penal Code. Finally it has been submitted that in view of the consistent eye-witnesses of the occurrence, the prosecution cannot fail on the ground that the agreement paper was not filed.

9. From perusal of the materials on record and careful consideration upon the argument advanced on behalf of the parties as well as the State and also from perusal of the order impugned dated 18.7.2003, it is evident that the cognizance of the offence was taken by the Judicial Magistrate after applying her judicial mind taking into consideration the evidence collected in course of enquiry by her.

The provisions of Section 482 of the Code of Criminal Procedure was enacted to prevent abuse of the process of Court or otherwise to secure the ends of justice as envisaged by the Supreme Court of India in the case of State of Haryana v. Bhajan Lal reported in 1992 SCC 426. Similarly, sanction u/s 197-A of the Code of Criminal Procedure is not attracted for prosecution against the petitioner under the facts and circumstances of the case.

10. In the present case, I do not find any illegality or irregularity or abuse in the process of Court and, therefore, there being no merit in the present case, this Criminal Miscellaneous Petition is dismissed. However, the petitioner may agitate his defence at the time of framing of charge which shall be considered without being prejudiced by this order.