
(2023) 04 JH CK 0021

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1925 Of 2012

Birsingh Munda And Others

APPELLANT

Vs

State Of Jharkhand And Another

RESPONDENT

Date of Decision : 10-04-2023

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 302

Criminal Law Amendment Act, 1932 — Section 17

Code Of Criminal Procedure, 1973 — Section 190(1)(a), 190(1)(b), 200, 202

Citation : (2023) 04 JH CK 0021

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Kripa Shankar Nanda, Shailesh Kumar Sinha, Nitish Krishna

Final Decision : Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

Heard Mr. Kripa Shankar Nanda, the learned counsel appearing on behalf of the petitioners, Mr. Shailesh Kumar Sinha, the learned counsel appearing for the respondent State and Mr. Nitish Krishna, the learned counsel appearing on behalf of the informant/ O.P.No.2.

Mr. Nanda, the learned counsel for the petitioners submits that petitioner no.1 and petitioner no.3 have left for their heavenly abode and that is why he is not pressing the instant petition so far petitioner nos.1 and 3 are concerned and confines his prayer with regard to petitioner nos.2, 4 to 7.

This petition has been filed for quashing of the order taking cognizance dated 19.08.2010 passed by the learned A.C.J.M., Khunti in G.R. Case No.205 of 2004(s) arising out of Arki P.S.Case No.18 of 2004 as well as entire criminal proceeding arising thereof registered for the offence under sections 147, 148, 149, 302 of the I.P.C and section 17 of the C.L.A Act, pending in the court of learned SDJM, at Khunti.

The prosecution case was lodged alleging therein that the case is based on ferdbeyan of one Fagu Munda alleging therein that he has three sons namely Sanika Munda, Basu Munda and Sukhram Munda however Sanika Munda was staying at Revta. It is further stated that on 9./10.5.2004 his son Sanika Munda went to watch Chhau Dance at Village Barigada and in the meantime Kundan Pahan along with his group came and ordered to sit all the person and further stated that if any one tried to move then he will be killed. He further stated that he will kill Sanika Munda of village Aradih. It is further stated that the aforesaid information was disclosed to the informant by one Sathe Munda and accordingly he went to the place of occurrence and found dead body of his son and one another namely Gadi Munda. It is further alleged that there is a land dispute for about 300 acre 90 dismil of land between all the accused persons named in the FIR and the informant party. There was a case decreed in favour of the informant also but the accused persons have threatened him that they will kill someone of his family with the help of some other person. It is further alleged that the accused persons have relationship with MCC Area Commander Kundan Pahan and he was used to visit to them for the purpose of food and therefore the informant raised suspicion that his son may be killed by accused nos.4 to 17 with the help of Kundan Pahan in course of watching Chhau Dance and as such the present FIR was registered.

Mr. Nanda, the learned counsel appearing for the petitioners submits that Kundan Pahan is the main accused and against him there are several cases. He submits that the entire villagers of Village Baligarha in the district of Khunti have been made accused in the case. He submits that the petitioners are villagers of that village and they have been unnecessarily made accused in the present case. He further submits that however the police has investigated the matter and these petitioners have not been sent up for trial. However, the learned court has taken cognizance against these petitioners which is against the mandate of law. He submits that there is nothing disclosed in the order taking cognizance as to what are the materials came against the petitioners.

Mr. Shailesh Kumar Sinha, the learned counsel appearing for the respondent State submits that counter affidavit has been filed. He submits that that except repetition of names of these petitioners, nothing has come in the present petition during the course of investigation and hence finding the case of lack of evidence against the present petitioners, report of investigation has been submitted.

The learned counsel for the informant/ O.P.no.2 submits that the learned court has rightly taken cognizance.

In view of the submission of the learned counsels appearing on behalf of the parties, the Court has gone through the materials on record and finds that admittedly the case was lodged against the main accused Kundan Pahan. The status report is on the record which suggest that the case of Kundan Pahan has been split up and the case of Kundan Pahan has been committed to the court of Sessions. In the counter affidavit of the respondent State it is crystal clear that

apart from repetition of name of the petitioners nothing has come against these petitioners and that is why the police has submitted supplementary charge sheet whereby the petitioners have not been sent up for trial. The learned court has taken cognizance by order dated 19.08.2010. Once the charge sheet is submitted the learned court has got four options as below:

(1) He may agree with the conclusion of the police and accept the final report and drop the proceeding.

(2) He may take cognizance under Section 190(1)(b) CrPC and issue process straightaway to the accused without being bound by the conclusion of the investigating agency where he is satisfied that upon the facts discovered by the police, there is sufficient ground to proceed.

(3) He may order for further investigation if he is satisfied that the investigation was made in a perfunctory manner.

(4) He may without issuing process and dropping the proceedings under Section 190(1)(a) CrPC upon the original complaint or protest petition treating the same as complaint and proceed to act under Sections 200 and 202 CrPC and thereafter whether complaint should be dismissed or process should be issued."

In the case in hand, the learned court has opted option no.(2) and to that extent there is no illegality. The learned court on its own differing with the final form taken the cognizance, however, once the final form is submitted whereby the accused have not been sent up for trial, atleast some reasons are required to be disclosed in the order taking cognizance as to what are the prima facie materials against the petitioners for taking cognizance. The Hon'ble Supreme Court in the case of "M/s GHCL Employees Stock Option Trust- versus- M/s India Infoline Limited", reported in [2013 (2) East Cr. C. 326 (SC) has held that before issuing summons the Court has to record its satisfaction that prima-facie case is made out against the accused and satisfaction has to be recorded only for the purpose of issuing process. The Magistrate has to see whether there are any materials to proceed against the accused person. Consideration for taking cognizance is different than that of issuing process. One is directed towards the offence and the other is towards the person. This cannot be mixed, even if a composite order is passed. In the case of "Sunil Bharti Mittal – versus- CBI", reported in (2015) 4 SCC 609, the Hon'ble Supreme Court has held that an opinion to proceed further against the accused is to be stated in the order itself. Further in the case of "Pepsi Food Limited and Another- versus- Special Judicial Magistrate & Others", reported in (1998) (5) SCC 749, the Hon'ble Supreme Court in para-28 has observed as follows:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of

the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would -8- that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused." This proposition has also been reiterated by the Hon'ble Supreme Court in the case of "Ramdev Food Products Private Limited- versus- State of Gujrat, reported in (2015) 6 SCC 439".

The Court has considered that in the order taking cognizance there is no disclosure of the prima facie case so far as these petitioners are concerned, and the order taking cognizance is bad in law considering that the petitioners have not been sent up for trial and the learned court has taken cognizance as it has been already discussed hereinabove as to what are the options to be considered by the learned court to proceed. Such reasons are required to be disclosed in the order taking cognizance which is lacking in the case in hand.

Accordingly, order taking cognizance dated 19.08.2010 passed by the learned A.C.J.M., Khunti in G.R. Case No.205 of 2004(s) arising out of Arki P.S.Case No.18 of 2004 is set aside.

The matter is remitted back to the learned concerned court to pass a fresh order in accordance with law.