
(2023) 06 JH CK 0005

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1372 Of 2016

Debashish Chatterjee @ Devashish Chatterjee

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 13-06-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Citation : (2023) 06 JH CK 0005

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Ajay Kumar Sah, Vishwanath Roy

Final Decision : Allowed/Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. At the outset learned counsel Mr. Lukesh Kumar submits that No Objection Certificate has been taken from him by opposite party no.2 and now he is not in a position to argue the matter.

2. Once No Objection Certificate was taken by opposite party no.2, it was incumbent upon her to make alternative arrangement, however till date, she has not made any alternative arrangement, which suggests that opposite party no.2 has lost interest in this matter. Accordingly, this matter is being heard in absence of opposite party no.2.

3. Heard Mr. Ajay Kumar Sah, learned counsel for the petitioner and Mr. Vishwanath Roy, learned counsel for the State.

4. This petition has been filed for quashing of the cognizance order dated 10.09.2014 as well as for quashing of entire criminal proceeding in connection with Complaint Case No.1338 of 2014, pending in the court of the learned Chief Judicial Magistrate, Dhanbad.

5. The complaint case was filed alleging therein:

(a) The complainant who is presently working as Personnel Assistant at Bastacolla Area No. IX, Dhanbad has been rendering her services with full honesty and dignity. However, the accused No.1 namely Dr. Harendra Kishore who is presently posted as Head of the Department(Legal) B.C.C.L. at its Headquarter, Koyla Bhawan, Dhanbad and previously posted at Kusunda No.VI in the year 2004 has been causing mental, financial and physical harassment since 2004. Upon protest, it is alleged that the accused No.1 has been transferring the Complainant from one unit to another. On being asked as to why this is being done with her it is alleged that accused no.1 clearly stated that if she does not listen to his sayings this would continue.

(b) Upon coming to learn about the activities of the accused No.1 the accused No.2 namely Sri A.K. Dubey (Arun Kumar Dubey). Personnel Manager(Administration), and accused No.3 namely P. K. Mishra (Personnel Manager) also started causing physical and financial assault upon the complainant and they also threatened the complainant that if she does not listen their sayings, she would be transferred to such place where people would rip and tear her to such an extent that she would not be in a position to do her service in BCCL. The opposite party No.2 has also alleged that accused No.2 Sri A.K. Dubey always hurls dirty words and exerts pressure for making her succumb to his demands and has even asked for cash money on several occasions. As a matter of fact the accused No.2 Sri A.K. Dubey demanded and took a sum of Rs.30,000/- and at present has again made a demand of Rs.50,000/-. She has also alleged that on non-payment of the amount Sri A.K. Dubey has insulted her through Sri Debashis Chatterjee, the Clerk in the office of Sri Dubey. She further alleged that accused no.3 also in connivance with accused No.2 has been provoking her to do wrong things.

(c) On account of such acts of the accused persons, it is alleged that the complainant has been mentally harassed and feels injured. It is also alleged that she has made several written applications to high ranked officers but apart from assurances no relief has been extended to her as such the accused No.1 has allegedly started saying that he has now become a high officer in BCCL and therefore no one can do anything to him and has asked her to fall in line otherwise she along with her husband will have to loose their job and their life would be made a hell.

(d) The Opposite Party No.2 has also alleged that accused No.3 has also been making similar threats of dire consequences if she does not surrender herself or pays money to them and therefore, out of fear, the complainant/ opposite party No.2 has paid lakhs of rupees to the accused persons and still she is being kept under fear. It is also alleged that because of the accused persons the complainant has become mentally ill and word is being spread that nobody should pay any heed to her sayings.

(e) The opposite Party No.2 has also alleged that while she was returning to her residential quarter after meeting her relatives, all the four accused persons, by

parking their car in a deserted place while abusing the complainant said to her that she has now changed and instead of making them happy is writing against them and thereafter accused Nos.1 to 3 pulled her and made her to sit inside the car. It is alleged that two ladies protested, but the accused persons started misbehaving with her and on attempt of raising alarm, her mouth was pressed and threatened to be thrown out from the car. It is also alleged that the accused persons threatened her by saying that if they call her over phone, she should come to them and thereafter they left her at the deserted place.

(f) The complainant has alleged that she gave Information of the incident to Jharia Police Station on the next day but no action was taken. Therefore the complaint as alleged has been instituted in court.

(g) The complainant has asserted that the accused persons taking advantage of their high position and approach have been causing physical and financial exploitation as a result of which the opposite party No.2 has broken down and is facing fear/threat of herself in going to the office.

(h) The complainant is a lady coming from extremely backward class category while the accused persons are men of upper caste.

(i) The accused persons have caused exploitation and torture upon complainant as a result of which the complainant has to remain under constant treatment of doctors.

(j) The complainant is a married lady and wishes to lead a peaceful life with her husband and children but the accused persons have not been allowing her to do so and only because of her employment she has been tolerating the exploitation since several years.

(k) The complainant had accordingly prayed to the court to take cognizance of the offence, issue summons upon the accused persons and take appropriate legal action against the accused persons.

6. Mr. Sah, learned counsel for the petitioner submits that the petitioner was posted as Clerk in Bastacolla Area No. IX of M/s. BCCL. He submits that opposite party no.2 is in the habit of filing one case by another and she has filed total 12 complaint cases against the officers of M/s B.C.C.L. He further submits that earlier complainant-opposite party no.2 has filed a complaint in the year 2009 and on the same day the matter was referred to Standing Committee constituted in terms of the law laid down by the Hon'ble Supreme Court in the case of Vishaka Vs. State of Rajasthan; [(1997) 6 SCC 241]. He also submits the internal mechanism of such allegations with regard to sexual harassment at work place was involved in B.C.C.L and accordingly six men Committee was constituted and the Committee after conducting the enquiry submitted a report on 16.4.2010 wherein opinion has been given that as the complaint of Prabha Kumari of sexual harassment at work place against the official cannot be established beyond doubts in absence of corroborative evidence and the enquiry report was

considered by this Court in the case arising out of the same complaint case of other accused person in Cr.M.P. No.2578 of 2016 and Cr.M.P. No.2249 of 2016, which was decided by this Court vide judgment dated 25.04.2022 and considering all the aspects, the said petitions were allowed. He submits that in the case of other accused persons, which was the subject matter of the earlier complaint case, the accused persons have faced departmental proceedings, in which they have been exonerated. He submits that the pleading of departmental proceeding against the present petitioner is not there and that is why he is not sure whether departmental proceeding, so far as the present petitioner is concerned, was initiated or not. He further submits that rest of the facts are identical which were the subject matters of Cr.M.P. No.2578 of 2016 and Cr.M.P. No.2249 of 2016 and, therefore, the entire criminal proceedings may kindly be quashed.

7. Mr. Vishwanath Roy, learned counsel for the State submits that it is an admitted fact that so far as other two accused persons are concerned, entire criminal proceedings has been quashed in Cr.M.P. No.2578 of 2016 and Cr.M.P. No.2249 of 2016.

8. The order passed by this Court in Cr.M.P. No.2578 of 2016 and Cr.M.P. No.2249 of 2016 has been placed by the learned counsel for the petitioner. It appears that in those cases, the Court has considered the judgment passed in Vineet Kumar and another v. State of Uttar Pradesh and another; [(2017) 13 SCC 369]. Paragraph 41 of the said judgment speaks as under:

"41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal, which is to the following effect:

"102. (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge." Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal, but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal

proceedings.””

9. It appears that the first allegation was with regard to the year 2004 whereas the complaint case filed in the year 2014 and on the point of malicious prosecution, a reference may be made to the judgment passed in *Manoj Kumar Sharma v. State of Chhattisgarh*; [(2016) 9 SCC 1].

Paragraphs 32, 36 and 37 of said judgment are quoted herein below:

“32. In the above backdrop, it is also imperative to discuss the scope of inherent power of the High Court under Section 482 of the Code. The appellants before us filed a petition under Section 482 of the Code for quashing of the FIR on the ground that the FIR was filed after a delay of 5 (five) years and is barred by territorial jurisdiction. The High Court, on the other hand, after taking note of the fact that the investigation is in the final stage in the matter and a charge-sheet is ready to be filed before the Judicial Magistrate First Class, ordered for its continuance without taking into consideration that it is barred by law. The court at Durg did not take notice of the fact that there is a legal bar engrafted in the matter for its continuance and the proceedings have been maliciously instituted after a delay of five years with an ulterior motive for wreaking vengeance on the appellants.

36. In view of the above discussion, we are of the considered opinion that the allegations made in the FIR are inherently improbable and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the appellants herein. Further, to invoke inherent jurisdiction under Section 482 of the Code, the High Court must be fully satisfied that the material produced on record is based on sound, justifiable and reasonable facts.

37. In the case on hand, malicious prosecution was instituted by the brother of the deceased after a period of five years that too on the basis of anonymous letters. There was no accusation against the appellants before filing of the FIR. The allegations are vague and do not warrant continuation of criminal proceedings against the appellants. Also, the court at Durg has no territorial jurisdiction because cause of action, if any, has arisen in Ambala. The criminal proceeding is grossly delayed and a result of belated afterthought. The High Court failed to apply the test whether the uncontroverted allegations as made *prima facie*, establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit the prosecution to continue. The High Court did not apply its mind judiciously and on an incorrect appreciation of record, ordered for continuance of the investigation on a petition under Section 482 of the Code. This power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results.”

10. It is an admitted fact that the opposite party no.2 has earlier filed the case in the year 2004 which was subject matter in view of the “Vishaka” case (*supra*)

before the six men Committee and the Committee after much deliberation and after considering the evidence, has submitted report and the petitioners namely Arun Kumar Dubey and Dr. Harendra Kishore in Cr.M.P. No.2578 of 2016 and Cr.M.P. No.2249 of 2016 respectively were exonerated and subsequently the opposite party no.2 has filed this complaint petition against the petitioner and others. In para 26 of the petition, the complaint made by the opposite party no.2 has been disclosed whereby it transpires that 12 cases have been filed against the employee of the BCCL by the opposite party no.2, which suggest that opposite party no.2 by way of malafide intention implicating the employees of the BCCL by way of filing the false case.

11. In view of the above, it appears that the case of the petitioner is fully covered in view of the judgment passed by this Court in Cr.M.P. No.2578 of 2016 and Cr.M.P. No.2249 of 2016, vide judgment dated 25.04.2022 and further the case of the petitioner is fully covered in view of the judgment passed by the Hon'ble Supreme Court in State of Haryana v. Bhajan Lal; [1992 Supp (1) SCC 335]. Accordingly, the cognizance order dated 10.09.2014 as well as the entire criminal proceeding in connection with Complaint Case No.1338 of 2014, pending in the court of the learned Chief Judicial Magistrate, Dhanbad are quashed.

12. Accordingly, this petition is allowed and disposed of.

13. Pending I.A., if any, is disposed of.