

(2019) 07 JH CK 0195

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1415 Of 2003

Deo Kumar Gupta And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 342, 387
Code Of Criminal Procedure, 1973 — Section 205

Citation : (2019) 07 JH CK 0195

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Indrajit Sinha, P.D. Agarwal

Final Decision : Dismissed

Judgement

1. Heard Mr. Indrajit Sinha, counsel appearing on behalf of the petitioners.
2. Heard Mr. P.D. Agarwal, counsel appearing on behalf of the State.
3. The relief prayed by the petitioners in this application is as under:-

"For quashing the entire criminal proceeding initiated as against the petitioners including the order dated 23.09.2003 passed by Shri Anil Kumar Singh, learned Chief Judicial Magistrate, Koderma, in connection with Koderma (Telaiya) Police Station Case No. 93 of 2003 arising out of Complaint Case No. 103 of 2002, whereby and whereunder the learned Chief Judicial Magistrate, Koderma, after rejecting the final form submitted by the Police, was pleased to take cognizance of the offences under Sections 342, 387, 120B of the Indian Penal Code against both the petitioners and was also pleased to issue summons for appearance of the accused persons without following the procedure laid down in Code of Criminal Procedure in a mechanical manner and all further proceeding subsequent thereto in the said Koderma (Telaiya) Police Station Case No. 93 of 2003 arising out of Complaint Case No. 103 of 2002, now pending in the court of learned Chief Judicial Magistrate at Koderma."

4. Counsel for the petitioners submits that entire criminal proceeding is an abuse of the process of law in as much as on the one hand, there has been no cause of action at Koderma and on the other hand, frivolous allegations have been levelled against the petitioners and the ingredients of Sections for which cognizance has been taken are not attracted. Counsel for the petitioners further submits that in such view of the matter, entire criminal proceeding is fit to be set aside. Counsel has also referred to one supplementary affidavit dated 03.12.2015 and has referred to the judgment by this court dated 21.05.2004 in Cr. M.P. No. 720 of 2003 said to be between the same parties and has referred to paragraph no. 6 of the said judgment to submit that conduct of the informant clearly indicates that the entire proceeding is malafide prosecution.

5. Counsel appearing on behalf of the State on the other hand submits that the impugned order of cognizance has been passed after considering the various paragraphs of the case diary and at this stage these points may not be appreciated and the petitioner may raise all these points at the stage of discharge.

6. At this, counsel for the petitioner submits that he may be permitted to withdraw this case with a liberty to take all the points at the stage of discharge including the points which have been raised in this petition and other points which may be available to the petitioner under law. He further submits that withdrawal of this petition may not prejudice the case of petitioners before the learned court below. He submits that he may also be given liberty to file petition under Section 205 of the Code of Criminal Procedure.

7. Considering the submissions made, this petition is permitted to be withdrawn with the liberty to the petitioners to take all the points which have been raised in this petition as well as any other points that may be available to the petitioners under law. Learned court below shall decide the matter in accordance with law without being prejudiced by any observation of this court in the present proceedings.

8. Interim order, if any, stands vacated.

9. Pending I.A., if any, is dismissed as not pressed.

10. Office is directed to communicate this order through FAX to the concerned court.