
(2023) 12 JH CK 0034

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 837 Of 2020

Dhiren Singh @ Dhirendra Kumar And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 11-12-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Indian Penal Code, 1860 — Section 34, 324, 325, 354, 379

Code Of Criminal Procedure, 1973 — Section 203, 482

Citation : (2023) 12 JH CK 0034

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Shailendra Kumar Singh, P.D. Agrawal, Ashok Kumar

Final Decision : Dismissed

Judgement

Gautam Kumar Choudhary, J

1. The summoning order dated 22.02.2019 passed in Complaint Case No.1227 of 2018 filed under Sections 354, 325, 324, 379 of the Indian Penal Code pending in the Court be Judicial Magistrate, 1st Class, Ranchi wherein prima facie case after enquiry has been found to be made out under Sections 323, 354, 34 of the Indian Penal Code is under challenge in the instant criminal miscellaneous petition.

2. As per the case of the complainant was the resident of Ranchi, petitioner no.1 was Nandosi of the complainant and petitioner nos.2 and 3 were his sons who were residents of Aurangabad and Gaya in Bihar. Alleged incidence takes place on 15.03.2018 at 8.45 p.m., when they called her to come near Birla Maidan as they lost the route of the residence of the complainant. When she went there, she was taken in the car and it is alleged that she was molested and assaulted by the accused persons. They threatened her from not filing any cases against them. There is no mention in complaint petition regarding genesis of the offence as to why the close relatives committed breach of trust and conjointly molested

the victim lady.

3. It is submitted by the learned counsel on behalf of petitioner that the instant case is classical example of false persecution as it was an outcome of learned dispute between both sides. One Prelitigation Suit No.143/2013 was decreed in favour of the petitioner no.1 by the order of Permanent Lok Adalat in Partition Suit No.143/13. The Review was also rejected vide order dated 20.06.2019. Being aggrieved by the said order, to wreak vengeance, present criminal case has been filed.

4. It is submitted that as per the statement, the incidence took place at a public place where many people had gathered after the incidence, but witnesses which are arrayed, are the husband and brother-in-law of the complainant. It is also submitted that the petitioners had no occasion to come to Ranchi as they were resident of Gaya. Petitioner no.1 was resident of Aurangabad and petitioner nos.2 and 3 are of Gaya. Petitioner no.2 was serving as Operation Theatre Assistant in Manorma Maternity and Surgical Home Private Limited, Gaya (Bihar) and the certificate has been given to the effect that on the said date, he was on duty in the said nursing home and petitioner no.3 was Data Operator and on the date of incidence, he was present there and the copy of attendance register has been enclosed as Annexure-5.

5. Learned counsel on behalf of complainant submits that at the stage of issuance of process, meticulous examination of the witnesses is required. It is to be only seen that whether there was ground for proceeding against accused persons. It is submitted that it is not necessary to be mentioned in the complaint or by the complainant in the enquiry, the factual details of the incidence. It is submitted that she was called by mobile, but has not been mentioned in the complaint and in the statement.

6. After having considered the submission advanced on behalf of petitioner, on plain reading of the complaint and the statement of the witness, there are gaping holes in the entire prosecution story which gives strength to the submissions advanced on behalf of the petitioner that this was filed in order to wreak vengeance on account of ongoing land dispute.

7. The accused persons are all residents of Bihar, whereas the complainant is the resident of Ranchi and close relative. It appears to be highly improbable that father along with his sons will come all the way from Bihar to Ranchi to molest and assault the lady complainant. The incidence is alleged to have taken place in a public place, but none from the public been cited as witness. It is said that she was called from a house by the petitioners as they had lost route. It is intriguing against background of land dispute that the complainant would good to help them find the route. There is absolute, incoherence in the prosecution story and everything is left to conjecture. Part of the allegations have been disclosed regarding Sections 379 and 325 of the Indian Penal Code as stated in the complaint.

8. Criminal proceedings are serious affairs as it interferes with the liberty of citizens. Learned it could below are not supposed to act mechanically like a post office and issue process without scrutinizing and applying the judicial mind. The very purpose and object of the provisions like Section 203 Cr.P.C shall be rendered nugatory, if persons are proceeded against blindly without scrutinizing the materials on record.

It has been settled by the Hon'ble Supreme Court in Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749

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 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 scrutinise 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.

- Haji Iqbal Vs State of UP 2023 SCC Online SC 948

- 14. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of

the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

Under the aforesaid facts and circumstance and the reasons discussed above, the present case appears to be filed to wreak vengeance on account of civil dispute. To permit the continuation of the criminal proceeding will be an abuse of process of Court.

The summoning order as well as entire criminal proceeding, is quashed.