

(2007) 03 JH CK 0008
In the Jharkhand High Court

Girija Prasad @ Girish Prasad and Another	APPELLANT
Vs	
State of Jharkhand and Another	RESPONDENT

Date of Decision : 02-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 192, 197, 202, 482
Penal Code, 1860 (IPC) — Section 323, 408, 420, 504

Citation : (2007) 2 JCR 240

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—The petitioners have filed the instant application invoking powers of this Court u/s 482 of the Code of Criminal Procedure for quashing the entire proceeding as also the order dated 9.3.2006 passed by Sri Vijay Kumar, Judicial Magistrate, 1st Class, Koderma in complainant Case No. 68 of 2006 whereby summons were ordered to be issued against the petitioners directing them to appear and face trial for the offence under Sections 323, 420, 408 and 504.

2. Fact of the case in brief is that the opposite party No. 2- complainant Subhash Yadav filed a petition of complaint before the Court of Chief Judicial Magistrate, Koderma against the petitioners and another accused namely, the Block Development Officer, Chandwara Block (accused No. 3). Allegations in the complaint are that the complainant being an agriculturist and social worker, on being informed that a scheme was floated by the Government through the Department of R.E.O., Road, for laying a morum road connecting the village Jamkatti to village Pokdanda at a cost of Rs. 6.00 lakh, the complainant approached the local Block Development Officer with a request to allot him the. He was directed by the B.D.O. on 16.1.2006 to contact the present petitioners who were employed at Chandwara block as Head Clerk and Head Assistant respectively. The petitioners on being so approached by the complainant, are

alleged to have demanded commission of 6% of the total estimated amount from the complainant and had even threatened to cancel the work. The accused persons had allegedly demanded advance payment of the commission amount and accordingly, the complainant met both the accused persons at their office on 18.1.2006 and in presence of witnesses, paid a sum of Rs. 30,000/- to both of them. After having received the amount, both the petitioners advised the complainant to call for a meeting of Gram Sabha for selection of agent to execute the job. Meeting of Gram Sabha was held on 18.1.2006, but for some reason, the nomination of an agent could not be made and further meeting for the said purposes were postponed sine die. Realizing thereafter that the allotment of the construction work was not likely to be made to him in the near future, the complainant approached the petitioners on 6.2.2006 with a request to refund his amount. The petitioners called him on the next date, but he was again sent back and asked to come later and meet them at Ranchi-Patna Road. When the complainant met them at about 5.00 p.m. in the evening on the following day, both the accused persons not only refused to return his money but had also indulged in abuses and manhandling. The complainant has claimed that the accused persons by making dishonest misrepresentation had induced him to part away with his money and had caused wrongful loss to the complainant.

3. On receipt of the complaint petition, the learned Chief Judicial Magistrate, Koderma transferred the case u/s 192, Cr PC for inquiry and disposal to the Court of Sri Vijay Kumar Judicial Magistrate, 1st Class, Koderma, who after conducting inquiry u/s 202, Cr PC by examining the complainant and his witnesses on solemn affirmation, recorded his observation that a prima facie case is made out on the basis of the statements of the complainant and his witnesses, for the offences under Sections 420 and 408, IPC against the accused No. 3 and for the offence under Sections 323, 420, 408 and 504, IPC against the present petitioners and summons were ordered to be issued against them. It is against the aforesaid order that the petitioners have filed the instant application.

4. Petitioners have assailed the aforesaid order of the learned inquiring Magistrate basically on the ground that the order is thoroughly bad on account of the fact that it was passed without application of judicial mind and without considering the fact that even considering the allegations in its entirety, no offence whatsoever is made out against the petitioners. Learned Counsel for the petitioners submits that the impugned order of the learned Court below amounts to abuse of the process of the Court and perpetrates gross injustice to the petitioners, since the learned Court below has failed to appreciate that admittedly the petitioners happen to be the Head Assistant and Assistant of the Block Development Officer, Chandwara and in their respective capacities; they are not competent to allot the road construction work under the scheme to any particular individual since as per guidelines of the scheme, the work was to be allotted only to the beneficiary committee constituted at the meeting of the Gram Sabha of the village and in fact, it is the beneficiary committee which is supposed to execute the road construction work within its village. Learned Counsel explains

further that the learned Court below has failed to consider that even as admitted by the complainant, meeting of the beneficiary committee of the village was held on 18.1.2006, but the complainant had failed in his attempt to get the work allotted in his favour. Furthermore, the learned Court below ought to have taken into consideration the fact that the complainant was bearing ill motive against the petitioners, since he wanted to take revenge against them and against the Block Development Officer (accused No. 3) for their having forwarded a report to the Deputy Commissioner, Koderma against the two witnesses of the complainant named in the complaint petition for misappropriation of Government money. Learned Counsel adds further that the instant complaint case, as filed by the complainant, is nothing but a malicious prosecution launched with revengeful motive against the accused persons. Another ground advanced by the learned Counsel is that admittedly, petitioners are Government servants and the allegation levelled against them being connected with discharge of their official duty, sanction for prosecution ought to have been obtained from the State Government u/s 197, Cr PC, but no such sanction was obtained and therefore, cognizance as taken by the Court below against the petitioners for the aforesaid offences, is bad in law and, the entire proceeding is liable to be quashed. Learned Counsel refers in this context to a judgment of the Apex Court reported in Ramesh Kumar Mishra v. State of Bihar 2006 (2) JLJR 96 (SC).

5. It appears from the office report that notice was issued to the opposite party No. 2 both under registered cover as well as ordinary process and service report received in the office indicates that opposite party No. 2 had refused to accept the notice and consequently, notice was hanged on the door of the house of the opposite party No. 2 by the process server, service of notice was therefore deemed to have been effected on him.

6. Learned Counsel for the petitioners maintains that this is a fit case for Invoking powers of this Court u/s 482, Cr PC since the continuance of the proceedings against the petitioners would amount to an abuse of the process of law and injustice to the petitioners. No doubt, Section 482, Cr PC reserves Inherent rights of the High Court and the section emphasizes that the High court has widest jurisdiction to pass an order to secure the ends of justice. Such powers can definitely be exercised to prevent abuse of the process of the Court and where there is an allegation of miscarriage of justice, which needs to be rectified by intervention. The High Court can very well exercise its inherent jurisdiction for quashing a criminal proceeding, but only after it finds that the allegation made in the complaint do not constitute an offence.

Likewise, an order of the Magistrate issuing summons can be challenged before the High Court u/s 482, Cr. PC. However, the inherent powers can be invoked only where allegation in the complaint taken on their face value plus verification of the statement of the complainant and the witnesses recorded on solemn affirmation do not make out a prima facie case at all. If of on the other hand, the allegation in the complaint and materials available on record do suggest prima

facie case for any offence against any person, the order issuing process directing the accused to appear and face trial, will not invite any interference in exercise of the power u/s 482, Cr PC.

7. At the stage of taking cognizance of the offence as also at the stage of recording finding as to the existence of a prima facie case warranting issuance of summons against the accused, the Magistrate no doubt has to apply his judicial mind to the facts alleged and the material available on record. However, it is not for the Magistrate to enter into and sift evidence to find out if the case is likely to end in conviction or not. A meticulous analysis of the case to find that the case would end in conviction is not called for.

8. In the instant case, the allegation against the petitioners is that they had demanded and obtained from the complainant a sum of Rs. 30,000/- by way of commission against the work which they had by their representations, made the complainant to believe would be allotted to him. The complainant was made to believe that the work of road construction would Invariably be allotted to him and it is under such inducement that he was made to pay the amount of Rs. 30,000/- to the petitioners which after having received, they had refused to acknowledge and to refund. Learned Court below has considered the allegations in the complaint finding prima facie support from the statements of the witnesses recorded on solemn affirmation and has accorded its satisfaction that a prima facie case for the offences mentioned in the order, has been made out against the accused persons. The grounds taken by the petitioners that the learned Court below ought to have considered that the instant case, as filed by the petitioners, was entirely based on false and misleading allegation or that it was filed in order to seek revenge against the petitioners on account of oblique motive, appears to be misconceived as because there exists no material or record to even remotely invite such suggestion.

9. As regards the ground of want of sanction u/s 197, Cr PC, the contention of the petitioners is that the acts of the petitioners, as alleged, amount to acts in discharge of their official duty. This issue as to whether the acts do constitute part of their discharge of their official duty or not, is yet a question which can be decided at the time of trial by the trial Court and at an appropriate stage and therefore, failure to obtain sanction for prosecution cannot be considered at this stage, nor can the ground of sanction be considered at this stage for quashing the prosecution of the petitioners. For the reasons aforesaid, I do not find any merit in this application and, therefore, this application is dismissed.