
(2013) 04 JH CK 0035
In the Jharkhand High Court
Case No : Criminal M.P. No. 2179 of 2012

Haru Sk. and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 22-04-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 426, 436

Citation : (2013) 3 JLJR 714

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Gautam Kumar, for the Appellant;

Judgement

Rakesh Ranjan Prasad, J.—Order dated 3.1.2012 passed by learned Magistrate, Rajmahal in P.C.R. Case No. 68 of 2011, is being sought to be quashed on the ground that the instant case is an outcome of malicious prosecution. Mr. Gautam Kumar, learned counsel appearing, for the petitioners submits that the first information report was lodged alleging therein about commission of the offence under Sections 436/426/34 of the Indian Penal Code. That case was registered as Rajmahal (Radhanagar) P.S. Case No. 160 of 2010, G.R. No. 312 of 2010.

2. The matter was investigated upon and during investigation, the I.O. did find that since the petitioners had lodged the case against the informant party, therefore, a false case has been lodged by the Informant against these petitioners and, thereby, final form was submitted.

3. On submission of the final form, a protest petition was lodged, which was treated to be a complaint in which cognizance of the offence has been taken against these petitioners under Sections 436/426/34 of the Indian Penal Code vide order dated 3.1.2012, which is under challenge.

4. Learned counsel appearing for the petitioners further submits that obviously in view of the finding given by the I.O. the allegation levelled against these petitioners can be said to be tainted with malice and as such, the order taking

cognizance is to be quashed.

5. Admittedly, cognizance has been taken on the basis of the material brought during enquiry, whereby the allegation seems to be there, constituting offence under Sections 436/426/34 of the Indian Penal Code.

6. In such situation, even if the case is there against the complainant, lodged by these petitioners, it cannot always be said that the instant prosecution is an outcome of the case lodged by the Informant. It is quite possible that occurrence may be true and may not be true. In such situation, if the occurrence is true, the cognizance of the offence cannot be quashed, even if the case has been lodged earlier against the complainant.

7. It be recorded that there may be a case where the court, on the facts and circumstances of the case, may come to the conclusion of case being actuated with malice. But here in the Instant case, in the facts and circumstances of the case, no such opinion can be formed at this stage. Thus, I do not find any Illegality with the order taking cognizance.

8. Accordingly, this application is disposed of. However, this plea would always be available to these petitioners at an appropriate stage.