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**(2012) 04 JH CK 0147**

**In the Jharkhand High Court**

**Case No :** Criminal Miscellaneous No. 757 of 2000 (R )

H.K. Akhauri, A.R. Murarka, N.P. Singh and Laxmi Prasad APPELLANT  
Vs  
The State of Bihar (Now Jharkhand) and Mrs. Meena Narayani RESPONDENT

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**Date of Decision :** 10-04-2012

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Criminal Procedure Code, 1973 (CrPC) — Section 397, 482  
Penal Code, 1860 (IPC) — Section 109, 323, 34, 341, 354

**Citation :** (2012) 2 JLJR 328

**Hon'ble Judges :** Harish Chandra Mishra, J

**Bench :** Single Bench

**Advocate :** Vijay Pratap Singh and Mr. Ashok Kumar Sinha, for the Appellant; Niki Sinha, Assistant Public Prosecutor for the State and Mr. J.C. to Mr. Rajesh Kumar, Advocate for the Opp. Pary No. 2, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Mr. Justice H. C. Mishra

1. Heard learned counsels for both the sides. This application has been filed for quashing the order dated 17.12.1999 passed by Sri A.K. Modi, learned Judicial Magistrate, 1st class, Jamshedpur in C-I Case No. 778 of 1999, whereby upon an enquiry in the complaint case, the Court below has found prima facie case against the petitioners under Sections 448, 384 and 506 of the I.P.C and has ordered for issuance of process against them. The petitioners have also prayed for quashing the entire criminal proceeding against them in the said complaint case.

2. The facts of this case lie in a short compass. The complainant opposite party No. 2 had filed a complaint case being Case No. 778 of 1999 before the learned Chief Judicial Magistrate, Jamshedpur, against the petitioners stating therein that the complainant was engaged in the business of construction of multistoried buildings and one Mrs. A. Sita Sampat and Mr. Sampat Kumar (herein after

referred to as "Sampats") had booked one duplex with the complainant after paying an amount of Rs. 25,000/- towards booking amount. Subsequently, the said Sampats canceled the booking of duplex and demanded their money back, which was not refunded by the complainant in view of the specific terms in the agreement against them. The said Sampats filed a case in the Consumer Protection Forum and the complainant had also filed a complaint case against them, in which, cognizance was taken against the said Sampats for the offence under Sections 406, 420, 323, 341, 387, 354, 109/34 of the I.P.C. The said Sampat Kumar happened to be an employee, working in TELCO Ltd. and the petitioners are the senior officials of TELCO Ltd. It is alleged that the said Sampat Kumar was the Personal Assistant of petitioner No. 1, H. K. Akhouri, whereas, the complainant's husband, namely, P. R. Narayan was also an employee in TELCO Ltd., the petitioner, H.K. Akhouri, being his controlling officer as well. It is alleged in the complaint petition that the petitioner, H. K. Akhouri pressurized the complainant and her husband to refund the money back to Sampats with interest and also to withdraw the criminal case filed by her. It is also alleged that the petitioner H. K. Akhouri had also expressed his desire to purchase one duplex from the complainant, for which, he was insisting to make a concession to the tune of Rs. 40,000/-, which was not accepted by the complainant and due to these reasons, the petitioners used to threaten [he complainant for dismissing her husband from service. There is allegation against the petitioners that on 30.8.1999 all the petitioners went to the house of the complainant, threatened the complainant to withdraw the said criminal case filed against Sampats and also to refund the amount of Rs. 25,000/- with interest, failing which, the accused petitioners threatened the complainant with dire consequences. With these allegations, the complaint petition was filed for the alleged offence committed by the petitioners under Sections 448, 384 and 506 of the I.P.C in the Court below.

3. The statement of the complainant was recorded on solemn affirmation at the stage of enquiry, wherein she has supported her case and she has also stated that the accused persons had issued charge-sheet against her husband. The complainant also examined two witnesses, her husband P. R. Narayan and one U. P. Barnwal, who was her employee, in the enquiry stage, in which they also supported the case. The husband of the complainant has stated in his evidence that on 30.8.1999 all the petitioners went to the house of the complainant and asked his wife to refund the money of Sampats and also to withdraw the case, failing which, they threatened to take action against this witness and they had also taken action against him. On the basis of the statement of the complainant recorded on solemn affirmation and the statements of the witnesses examined at the stage of enquiry, the Court below by order dated 17.12.1999 found the case prima facie against the petitioners and has ordered for issuance of summons, which has been challenged in the present application.

4. It may be stated at this place that the petitioners have brought on record Annexure 5 to show that the husband of the complainant, namely, P. R. Narayan,

who was an employee of the TELCO Ltd., was charge-sheeted for some dereliction in duty in his company and a departmental enquiry was initiated against him. The charge-sheet was issued in the signature of the petitioner No. 2, A. R. Murarka, being the Senior Manager (Central Materials and Steel) in TELCO Ltd. It is apparent from the plain reading of Annexure-5 that the charge-sheet was issued against the husband of the complainant on 1.9-1999 and the complaint petition has been filed against these petitioners on 10.9.1999, as is apparent from the certified copy of the order-sheet in C/I Case No. 778 of 1999, containing the impugned order dated 17-12-1999 also.

5. Learned counsel for the petitioners has submitted that from the complaint petition itself, it would appear that the same had been filed with mala fide intention and ulterior motive to harass the petitioners, being the senior officers of TELCO Ltd., only because departmental action was taken against the husband of the complainant due to which, a false criminal case has been filed against the petitioners for wreaking vengeance against the petitioners due to private and personal grudge. Learned counsel for the petitioners has further submitted that even on the basis of the statement made in the complaint petition, if taken in its entirety, no offence at all is made out against the petitioners u/s 384 of the I.P.C as well as Section 448 of the I.P.C and Section 506 of the I.P.C relates only to criminal intimidation and accordingly, the criminal proceeding against the petitioners, is fit to be quashed on this score as well.

6. In this connection, learned counsel for the petitioners has placed reliance upon the decision of the Supreme Court of India in R.S. Raghunath Vs. State of Karnataka and another, , wherein, the Supreme Court of India has laid down the categories of cases, in which, the High Court can exercise the inherent powers u/s 482 of the Cr.P.C. as also the extraordinary jurisdiction under Article 226 of the Constitution of India for quashing the criminal proceedings and has submitted that the present case is squarely covered by the said decision.

7. In this connection, learned counsel has also placed reliance upon the decision of the Supreme Court of India in Harshendra Kumar D. Vs. Rebatilata Koley Etc., , wherein, it has been held that in an appropriate case, if on the face of the documents which are beyond suspicion or doubt, placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court and the High Court may look into the materials which have significant bearing on the matter at prima facie stage. Placing reliance on this decision learned counsel submitted that the charge-sheet submitted against (he husband of the complainant as contained in Annexure-5 can be looked into at this stage by this Court, as it clearly shows that the same was issued prior to the filing of the complaint case against the petitioners and the complainant has been filed only with the ulterior motive in order to settle her grudge for taking action against her husband in a departmental proceeding.

8. Learned counsel further placed reliance upon the decision of the Supreme

Court of M. Mohan Vs. The State represented by The Deputy Superintendent of Police, , wherein also, the decision in Bhajan Lal's case (supra) has been noted along with other several decisions, holding that in appropriate cases, the criminal proceedings may be quashed in exercise of the power u/s 482 of the Cr.P.C. Learned counsel lastly placed reliance upon the decision of the Hon'ble Supreme Court in the case of M/s Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors., reported in AIR 1998 SC 128, wherein, it has been held that 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. Placing reliance upon these decisions, learned counsel submitted that the institution of the criminal case against these petitioners and the impugned order dated 17.12.1999 are absolutely illegal and cannot be sustained in the eyes of law.

9. Learned counsel appearing for the opposite party No. 2 on the other hand, has submitted that there is no illegality in the impugned order passed by the Magistrate finding the prima facie case against the accused persons for the offence under Sections 448, 384 and 506 of the I.P.C., as on the basis of the statements made in the complaint and of the complainant on S.A and the other witnesses examined on behalf of the complainant in the enquiry stage, the offence is clearly made out against the petitioners. Learned counsel accordingly, submitted that neither the impugned order, nor the continuance of the proceeding against the petitioners can be interfered with at this initial stage.

10. After having heard the learned counsels for both the sides and upon going through the record, I find that even if the allegations made in the complaint petition are taken in its entirety, no offence can be said to be made out against the petitioners for the offence under Sections 448 or 384 of the I.P.C.

11. Section 448 of the I.P.C prescribes the punishment for house trespass. The offence of house trespass is defined u/s 442 of the I.P.C as follows:-

442. House-trespass- Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass

12. Criminal trespass is defined u/s 441 of the I.P.C as follows:-

441. Criminal trespass - Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass

13. Thus, from the plain reading of these sections, it is apparent that for committing the offence of house trespass or criminal trespass, entering into or remaining in any building etc., is necessary, but it is nowhere alleged that the

petitioners entered into the house of the complainant, in the entire complaint petition or the statements of the complainant or of the witnesses examined by the complainant at the enquiry stage. Though the complainant and her witness have stated that the accused persons came to the house of the complainant, but they have not stated that the accused petitioners ever entered into the house of the complainant. Thus, in my considered view, even if this allegation made in the complaint petition is taken to be true, no offence can be said to be made out against the petitioners for the offence u/s 448 of the I.P.C., or even Section 447 of the I.P.C., which prescribes the punishment for criminal trespass.

14. So far as the offence u/s 384 of the I.P.C is concerned, this section prescribes the punishment for extortion. Extortion is defined u/s 383 of the I.P.C. as follows:-

383. Extortion- Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "Extortion "

15. Thus, from the plain reading of this section, it is apparent that the delivery of any property or any valuable security or anything which may be converted into valuable security is a sine qua non for constituting an offence of extortion. Though it is alleged in the complaint petition that the accused No. 1 had pressurized the complainant for allegedly giving him concession of Rs. 40,000/- in booking a duplex, but it is apparent that the said duplex was not booked by the accused, nor any amount was given or taken between the parties. It is also apparent from the entire complaint petition that there is no allegation whatsoever of delivery of any property or of any valuable security or anything which might be converted into the valuable security to the accused by the complainant and as such, even if " this allegation in the complaint petition is also taken to be true, no offence can be said to be made out against the petitioners u/s 384 of the I.P.C. as well. Section 506 of the I.P.C., which relates to criminal intimidation, is only alleged along with the offences under Sections 448 and 384 of the I.P.C, for which, as stated above, no offence at all is made out against the petitioners.

16. This apart, it is apparent from the complaint petition itself that the husband of the complainant was an employee in TELCO Ltd. under the petitioner No. 1 and it is also apparent from the statement made by the complainant on her S.A that the departmental action was taken against her husband. Even the husband of the complainant, who has been examined as witness No. 1 in the enquiry stage, has stated that the departmental action had been taken against him by the accused persons. In view of the fact that these statements are made by the complainant and her husband themselves, the document brought on record as Annexure-5 by the petitioners can very well be looked into, which clearly shows that the charge-sheet was filed against the husband of the complainant for the

departmental action against him by the petitioner No. 2 on 1.1.1999 and thereafter, the complaint petition has been filed on 10.9.1999. In my considered view, this clearly shows that the complaint petition was filed with a mala fide intention and oblique motive to settle the personal grudge of the complainant against these petitioners. In Bajan Lal's case (supra), the Apex Court has laid down the category of cases by way of illustration, in which, the extraordinary power under Article 226 of the Constitution of India, or the inherent power u/s 482 of the Code of Criminal Procedure can be exercised for quashing the criminal proceedings, in which Categories (1) and (7) are important, which are as follows:-

"102. \*\*\*

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

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(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.

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17. From the facts of this case, it is apparent that the allegation made in the complaint petition even if taken at its face value and accepted in its entirety, no prima facie case is constituted or offence is made out against the petitioners and it is also apparent that the complaint has been instituted with mala fide intention and, with ulterior motive for wreaking vengeance against the accused persons with a view to spite them due to private and personal grudge.

18. In the case of M. Mohan (supra) also, the Apex Court has approvingly taken note of its earlier decisions in R.P. Kapur Vs. The State of Punjab, , as also in Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, as follows:-

51. This Court had an occasion to examine the legal position in a large number of cases. In R. P. Kapur V. State of Punjab this Court summarized some categories of cases where the High Court in its inherent power can and should exercise, to quash the proceedings :

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings.

(ii) Where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) Where the allegations constitute an offence, but there is no legal evidence

adduced or the evidence adduced clearly or manifestly fails to prove the charge. 52. In *Nagawwa V. Veeranna Shivalingappa Konjaigi*, according to the Court, the process against the accused can be quashed or set aside: SCC P.741, Para 5

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused.

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

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19. In *Harshendra Kumar D.*'s case (*supra*), the Apex Court has laid down as follows:-

25.....It is fairly settled now that while exercising inherent jurisdiction u/s 482 or revisional jurisdiction u/s 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents -- which are beyond suspicion or doubt - placed by the accused, the accusations against him cannot stand, it would be a travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.

This decision clearly shows that in appropriate cases, the document placed by the accused which is beyond suspicion or doubt, can be taken into consideration for quashing the criminal proceeding. In the present case, the issuance of charge-sheet against the complainant's husband vide annexure 5 to the application, is certainly beyond any suspicion or doubt, as the departmental action is admitted by the complainant in her statement recorded on S.A as also by the husband of the complainant in his evidence recorded in the enquiry stage.

20. In view of the settled principles of law as discussed above, I am of the considered view that the initiation of the criminal proceeding against the petitioners in the C/I Case No. 778 of 1999, or the impugned order dated 17.12.1999 whereby the prima facie case has been found against the petitioners,

are absolutely illegal and cannot be sustained in the eyes of law. I am also of the considered view that the continuation of the criminal proceeding shall only amount to unnecessary harassment to the petitioners and for this reason also, the criminal proceeding cannot be allowed to continue against them. Accordingly, the entire proceeding in C/I Case No. 778 of 1999, as also the impugned order dated 17.12.1999 passed therein, by Sri A. K. Modi, learned Judicial Magistrate, 1st class, Jamshedpur, are hereby, quashed. Let the Lower Court Records be sent back forthwith. This application thus, stands allowed.