

(2024) 12 JH CK 0035

In the Jharkhand High Court

Case No : W.P. (Cr.) No. 689, 673, 831 Of 2024

Jagdish Prasad Das

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 10-12-2024

Acts Referred:

Constitution of India, 1950 — Article 226
Code of Criminal Procedure, 1973 — Section 156(3), 200, 203
Indian Penal Code, 1860 — Section 120B, 420, 427, 447, 467, 468, 471, 466, 474, 477A
Registration Act, 1908 — Section 82D
Negotiable Instruments Act, 1881 — Section 138, 141

Citation : (2024) 12 JH CK 0035

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Indrajit Sinha, Ajay Kumar Sah, Yogesh Modi, Anish Kumar Mishra

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard the learned counsel appearing on behalf of the petitioners as well as the learned counsel appearing on behalf of the respondent State in the respective cases.

2. All these writ petitions are arising out of the same First Information Report (FIR) and the order taking cognizance, and that is why, all these writ petitions are being heard together with consent of the parties.

3. In all these petitions the prayer has been made for quashing of the entire criminal proceeding arising out of Koderma P.S. Case No.11 of 2014 dated 09.01.2014, corresponding to G.R. No.44 of 2014, registered for the offence punishable under sections 420, 467, 468, 471, 466, 474, 477A and 120B of the Indian Penal Code and section 82(D) of Registration Act including the order dated 28.06.2024 passed by learned Chief Judicial Magistrate, Koderma whereby the

learned court has been pleased to take cognizance.

4. The F.I.R was registered on the basis of the written statement of informant namely Jitendra Kumar Deo, Land Reforms Deputy Collector, Koderma, stating therein that on 12.08.2013 sanction for the Registration of Sale of the land appertaining to Khata No.01., Plot Nos.11,12,13, 14, 15, 16, and 19 total area 427 acres situated at Village Taral, within Domchanch Anchal (Thana No.10) has been given by Sri Manoj Kishore Rukhaiyar, Sub Registrar, Registry Office, Koderma, vide Eleven Sale Deeds bearing Nos.4237, 4238, 4239, 4240, 4241, 4242, 4243, 4244, 4245, 4246 and 4247 all dated 12.8.2013.

It is alleged that in the FIR there is no plot over and above plot no.10 at Village Terai with Domchanch Prakhand (Thana No.10) and therefore, plot nos.11, 12, 13, 14, 15, 16 and 19 are baseless and imaginary lands of the aforesaid plots and therefore the registration is false and forged. It is further alleged in the FIR that identity card given by all the vendors are fake and the documents have been prepared with the help of forged identity card. It is further alleged in the FIR that false identification cards have been submitted by the identifiers of the sellers of the land and therefore all of them are guilty for impersonation. The affidavits filed by the purchaser, namely, the representative of Sri Rajeev David, Tata Steel Ltd. Company and the sellers are false and fabricated. It is alleged that the circumstances stated above, in connivance with all the staff of the Registry Office, all the persons involved in connection with the execution of the alleged registered Sale Deed, vendors and vendees, identifiers and witnesses whose names are mentioned in the written report, the aforesaid registration have been completed.

5. Mr. Indrajit Sinha, the learned counsel appearing on behalf of the petitioners submits that earlier the petitioners have moved before this Court in Cr.M.P. No.827 of 2014, Cr.M.P. No.182 of 2014, Cr.M.P. No.278 of 2014, Cr.M.P. No.234 of 2014 and Cr.M.P. No.412 of 2014. All these Cr.M.Ps. were decided along with other Cr.M.Ps also by judgment dated 12.9.2023 wherein on elaborate discussion this Court has quashed the order taking cognizance dated 02.01.2021 and remanded the matter to the learned court to pass fresh order. He submits that pursuant to that the learned court has again passed fresh order dated 28.06.2024 and it has again taken cognizance and no fresh reasons have been given in the order taking cognizance. He further submits that so far the petitioner namely Jagdish Prasad Das in W.P.(Cr.) No.689 of 2024 is concerned, he has only signed the sale-deed as representative of Tata Steel Limited. He submits that the petitioner Rajeev David @ Rajiv Darvid in W.P. (Cr.) No. 831 of 2024, he has identified Jagdish Prasad as representative of Tata Steel Limited. He submits that so far as the petitioner namely Madan Gopal Singh in W.P.(Cr.) No.673 of 2024 is concerned, he was not sent up for trial by the police and inspite of that the learned court has taken cognizance against him. He submits that this fact was there earlier also and again the same thing has been repeated by the learned court. He submits that no reason has been assigned on differing with the charge

sheet. In this background, he submits that if the loser is there, that is Tata Steel Limited and Tata Steel Limited has not lodged the complaint. He submits that the police is in mechanical way submitted the charge sheet. He further submits that the land in question was provided to Tata Steel Limited by land facilitator and they have disclosed that the land is existing and even the No Objection was issued by the Forest Department for the purpose of Compensatory Afforestation and the land facilitator was Mascot Real Estate. Tata Steel Limited by letter dated 23.3.2013 has requested the office of the Divisional Forest Officer, Koderma to grant No Objection Certificate to the schedule of the land mentioned in the First Information Report and he has certified that the land is not the forest land. The District Sub Registrar Koderma vide letter dated 26.06.2013 has also issued Non-Encumbrance Certificate with respect to the schedule of land mentioned in the First Information Report. Thereafter, Tata Steel Limited has also issued public notice in Hindi News Paper 'Aaj' dated 20.6.2013 inviting objection if any over the schedule of land. Tata Steel Limited has also filed application under the Right to Information Act on 17.07.2013 before the Public Information Officer cum Circle Officer and sought information regarding title of the land and in reply, the Public Information Officer has certified that the land in question belong to Abdul Razak Khan. He submits that after due diligence the said land was purchased by Tata Steel Limited and for that Stamp of Rs.1.34 Crores was purchased by Tata Steel Limited including the registration charges. He submits that if any loser is there, that is Tata Steel Limited, and Tata Steel Limited has not filed any case. In this background, the case of the petitioner is fully covered in light of the judgment of Hon'ble Supreme Court in the case of Mohammed Ibrahim and Others v. State of Bihar and Another, (2009) 8 SCC 751 wherein at paragraph nos. 18 to 21 it has been held as under:

"18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows:

- (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;
- (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and
- (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

- (i) to deliver any property to any person, or
- (ii) to make, alter or destroy wholly or in part a valuable security (or anything

signed or sealed and which is capable of being converted into a valuable security).

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner."

6. He further submits that if these petitioners have acted on behalf of Tata Steel Limited and Tata Steel Limited is not made party and in view of that the vicarious liability cannot be fastened upon them and to buttress his such argument he relied in the case of Sharda Kumar Sanghi v. Sangita Rane, (2015) 12 SCC 781 wherein at paragraph nos.9 and 11, it has been held as under:

"9. The allegations which find place against the Managing Director in his personal capacity seem to be absolutely vague. When a complainant intends to rope in a Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the vicarious liability. In Maksud Saiyed v. State of Gujarat [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] , it has been held, thus: (SCC p. 674, para 13)

"13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious

liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.”

10. In this regard, reference to a three-Judge Bench decision in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla* [*S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] would be apposite. While dealing with an offence under Section 138 of the Negotiable Instruments Act, 1881, the Court explaining the duty of a Magistrate while issuing process and his power to dismiss a complaint under Section 203 without even issuing process observed thus: (SCC p. 96, para 5)

“5. ... a complaint must contain material to enable the Magistrate to make up his mind for issuing process. If this were not the requirement, consequences could be far-reaching. If a Magistrate had to issue process in every case, the burden of work before the Magistrate as well as the harassment caused to the respondents to whom process is issued would be tremendous. Even Section 204 of the Code starts with the words ‘if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding’. The words ‘sufficient ground for proceeding’ again suggest that ground should be made out in the complaint for proceeding against the respondent. It is settled law that at the time of issuing of the process the Magistrate is required to see only the allegations in the complaint and where allegations in the complaint or the charge-sheet do not constitute an offence against a person, the complaint is liable to be dismissed.”

After so stating, the Court analysed Section 141 of the Act and after referring to certain other authorities answered a referent and relevant part of the answer reads as follows: (*S.M.S. Pharmaceuticals Ltd. case* [*S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] , SCC p. 103, para 19)

“19. ... (a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint.

Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.”

The same principle has been reiterated in *S.K. Alagh v. State of U.P.* [*S.K. Alagh v. State of U.P.*, (2008) 5 SCC 662 : (2008) 2 SCC (Cri) 686] , *Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd.* [*Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd.*, (2010) 10 SCC 479 : (2011) 1 SCC (Cri) 68] and *GHCL Employees Stock Option Trust v. India Infoline Ltd.* [*GHCL Employees Stock Option Trust v. India Infoline Ltd.*, (2013) 4 SCC 505 : (2013) 2 SCC (Cri) 414]

11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the Company, the Company has not been made a party

and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the Company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened under certain statutes. It has been so held by a three-Judge Bench in *Aneeta Hada v. Godfather Travels and Tours (P) Ltd.* [*Aneeta Hada v. Godfather Travels and Tours (P) Ltd.*, (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] in the context of the Negotiable Instruments Act, 1881.”

7. In the case of *Ravindranatha Bajpe v. Mangalore Special Economic Zone Limited and Others*, (2022) 15 SCC 430, wherein at paragraph nos.8.2 and 9.0, it has also been held as under:

“8.2. As observed by this Court in *Pepsi Foods Ltd. v. Special Judicial Magistrate* [*Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] and even thereafter in a catena of decisions, summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. In para 28 in *Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , it is observed and held as under : (SCC p. 760)

“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.”

9. From the order passed by the learned Magistrate issuing the process against the respondents herein, Accused 1 to 8, there does not appear that the learned Magistrate has recorded his satisfaction about a prima facie case against Respondents 2 to 5 and 7 and 8. Merely because Respondents 2 to 5 and 7 and 8 are the Chairman/Managing Director/Executive Director/Deputy General Manager/Planner & Executor, automatically they cannot be held vicariously liable, unless, as observed hereinabove, there are specific allegations and averments against them with respect to their individual role. Under the circumstances, the High Court has rightly dismissed the revision applications and has rightly confirmed

the order passed by the learned Sessions Court quashing and setting aside the order passed by the learned Magistrate issuing process against Respondents 1 to 8 herein — original Accused 1 to 8 for the offences punishable under Sections 427, 447, 506 and 120-B read with Section 34IPC.”

8. Relying on the above judgments, he submits that in absence of the company, which is not made accused, vicarious liability cannot be fastened upon them. He submits that so far as Madan Gopal Singh is concerned, even police has not sent up him for trial and pursuant to that on second time also the learned court has taken cognizance.

9. Mr. Yogesh Modi, the learned counsel appearing on behalf of the respondent State in W.P. (Cr.) No. 689 of 2024 and W.P. (Cr.) No. 831 of 2024 opposed the prayer. Mr. Modi, the learned counsel submits that the counter affidavit has been served however it was not submitted in the Registry in W.P.(Cr) No.831 of 2024 and in view of his such submission, the said counter affidavit is taken on record. He submits that the connivance is there and in view of that the police has investigated the matter and submitted the charge sheet. He further submits that Tata Steel Limited has been cheated by these petitioners and as such, case is made out. He draws the attention of the Court to paragraph nos.15 and 16 of the counter affidavit filed in W.P.(Cr.) No.831 of 2024 and submits that the purchaser has facilitated and managed the office of the Divisional Forest Officer and the person of Record Room, Koderma and in view of that the case against them is made out. On this ground, he further submits that the grounds taken by the learned counsel for the petitioner can be the subject matter of trial only and that cannot be looked into at this state under Article 226 of the Constitution of India. He submits that incorrect affidavit was filed by the petitioners.

10. Mr. Mishra, the learned counsel appearing on behalf of the respondent State in W.P.(Cr.) No.673 of 2024 submits that learned court has taken cognizance differing with the charge sheet and the petitioner Madal Gopal Singh was not sent up for trial however the reasons has been provided by the learned court and on this ground, the learned counsel for the respondent State submits that this writ petition may kindly be dismissed.

11. In view of above submission of the learned counsels appearing on behalf of the parties, the Court has gone through the materials on record as well as the order taking cognizance. It is an admitted position that these petitioners have earlier moved before this Court in Cr.M.P. No.827 of 2014, Cr.M.P. No.182 of 2014, Cr.M.P. No.278 of 2014, Cr.M.P. No.234 of 2014 and Cr.M.P. No.412 of 2014 and whereby the order taking cognizance was set aside by the judgment dated 12.9.2023 and the matter was remanded back to the learned court and thereafter the learned court has passed a fresh order dated 28.06.2024. In the order taking cognizance the learned court has again taken cognizance against Madan Gopal Singh who is the petitioner in W.P.(Cr.) No.673 of 2024 and the said cognizance has been taken only on the ground that he was the Chief Administrator of Tata Steel Limited. However, the police has not sent up him for

trial. There is no doubt that the learned court can take the cognizance differing with the charge sheet, however, the reasons of differing is required to be disclosed in the order taking cognizance which is lacking in the case in hand so far as Madan Gopal Singh is concerned.

12. It is further admitted position that Jagdish Prasad Das the petitioner in W.P. (Cr.) No.689 of 2024 has signed the sale deed as representative of Tata Steel Limited and Rajiv David has identified Jagdish Prasad Das as representative of Tata Steel Limited and the allegations are made that on non-existent land, the sale deed has been executed. It is further an admitted position that Rs.1.34 crores has been paid by Tata Steel Limited to the State exchequer as the stamp duty and registration fee. If such position is there, it appears that if any loser is there, that is Tata Steel Limited and Tata Steel Limited has not lodged the case against the petitioners who happened to be employees of Tata Steel Limited. All the sale-deeds have been brought on record wherein Jagdish Prasad Das has signed the deeds in representative capacity of Tata Steel and Rajeev David has identified him.

13. In this background, what cheating the petitioners have made is not clear and they are said to be purchaser on behalf of Tata Steel Limited and as such the case of the petitioners are covered in light of the judgment of Hon'ble Supreme Court in the case of Mohammed Ibrahim and Others v. State of Bihar and Another (supra).

14. Tata Steel Limited by letter dated 23.3.2013 has requested the office of the Divisional Forest Officer, Koderma to grant No Objection Certificate to the schedule of the land mentioned in the First Information Report and he has certified that the land is not the forest land. The District Sub Registrar Koderma vide letter dated 26.06.2013 has also issued Non-Encumbrance Certificate with respect to the schedule of land mentioned in the First Information Report. Thereafter, Tata Steel Limited has also issued public notice in Hindi News Paper 'Aaj' dated 20.6.2013 inviting objection if any over the schedule of land.

15. Further these petitioners are the officers of Tata Steel Limited. Thus, the allegations are against the company and the company has not been charge sheeted.

16. In view of above two judgments in the cases of 'Sharda Kumar Sanghi v. Sangita Rane' and 'Ravindranatha Bajpe v. Mangalore Special Economic Zone Limited and Others' (supra), vicarious liability cannot be fastened upon these petitioners who happened to be employees of Tata Steel Limited.

17. In paragraph nos. 15 and 16 of the counter affidavit in W.P.(Cr.) No.831 of 2024 the statement is made that purchaser has facilitated and managed the Circle Office, Divisional Forest Office and persons of Record Room, Koderma in preparing forged and fabricated documents and if such allegations are there against these persons, a clear cut case is also made out against them, however, these persons have not been made accused except the Divisional Forest Officer

and cognizance order is not there against these officers which clearly suggest that investigation was also not made with open mind. So far as the Circle Officer and the person of Record Room, Koderma are concerned they have not been charge-sheeted and the Divisional Forest Officer was not sent up for trial, however, the learned court differing with the charge sheet has taken cognizance against the Divisional Forest Officer. It is well-settled that conspiracy must be based on certain materials and the materials are required to be disclosed in the charge sheet. A reference may be made to the case of Central Bureau of Investigation, Hyderabad v. K. Narayana Rao, (2012) 9 SCC 512, wherein at paragraph no.24, it has been held as under:

"24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence."

18. In the case in hand, what are the basis of coming to the conclusion that these petitioners have connived and cheated is not disclosed and in view of that the offence under section 120B IPC is not made out.

19. Further, if such dispute is there and in mechanical way the charge sheet is submitted, the Court is required to look into the matter little closely so that any innocent person may not be put to unnecessary harassment and face the trial.

20. In view of above facts, reasons and analysis, entire criminal proceeding arising out of Koderma P.S. Case No.11 of 2014 dated 09.01.2014, corresponding to G.R. No.44 of 2014, pending in the court of learned Chief Judicial Magistrate, Koderma, so far as these petitioners are concerned, are hereby quashed.

21. W.P. (Cr.) No.689 of 2024, W.P. (Cr.) No.673 of 2024 and W.P. (Cr.) No.831 of 2024 are allowed and disposed of.

22. Pending petition, if any, also stands disposed of accordingly.