
(2016) 01 JH CK 0057
In the Jharkhand High Court
Case No : Cr. M.P. No. 963 of 2008

Kamal Duggal and other

APPELLANT

Vs

State of Jharkhand and other

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 482
Penal Code, 1860 (IPC) — Section 182, 211

Citation : (2017) 1 AIRJharR 552 : (2016) 2 ECrC 69 : (2016) 3 JLJR 317

Hon'ble Judges : Ravi Nath Verma, J.

Bench : Single Bench

Advocate : M.B. Lal, A.P.P, for the Respondent

Final Decision : Allowed

Judgement

Ravi Nath Verma, J. - Invoking the inherent power of this Court under Section 482 of the Code of Criminal Procedure (in short "the Code"), the petitioner has prayed for quashing of the entire criminal proceeding initiated in connection with C/2-3204 of 2007 and the order dated 03.10.2007 passed by learned Chief Judicial Magistrate, Jamshedpur in the said case whereby and where under, cognizance of offence has been taken under Sections 182 and 211 of the Indian Penal Code and summons have been issued for appearance of the petitioners.

2. The facts of the case, which is relevant for the proper adjudication of the issue involved in this case, in short, is that on the written report of Sri G. Singh, Sub-Inspector of Police of Bistupur Police Station addressed to the Chief Judicial Magistrate, East Singhbhum at Jamshedpur, the aforesaid case was lodged for initiation of proceeding under Sections 182 and 211 of I.P.C. on the allegation that at the instance of the present petitioner Kamal Duggal, Bistupur P.S. Case No. 217 of 2007 was lodged against some unknown thieves with the allegation that on 25.07.2007 at around 8:45 a.m., the storekeeper, responsible for heavy spares shed after opening the shed found that six pieces of starter copper bars were missing and after preliminary investigation, it was found that six pieces of

the starter copper bars have been stolen away by some unknown thieves. In course of inspection and from the statement of witnesses and on supervision by Senior Police Officer, it was transpired that in February, 2006, 29 pieces of copper starters were stolen from the Central Supply Store by the thieves by breaking the net, which is at the height of about 35-40 feet, and one piece of starter was left in the store and for that incidence, Bistupur P.S. Case No. 98 of 2006 was instituted under Section 379 of I.P.C. on 20.03.2006 but the Management did not get the said broken part of the net damaged by the miscreants. Where after, some miscreants have again stolen six pieces of copper starters the price of which is about Rs. 2,65,000/-. However after investigation, it was found that the allegation of theft was untrue and false. Accordingly, final form was submitted stating the allegation of offence under Section 461/379 of the Indian Penal Code to be untrue and false. The Investigating Officer, thereafter, prayed for initiation of a proceeding against the informant of that case, who is the petitioner here, for the offence under Sections 182/211 of the I.P.C. Consequent upon that, the present case being C/2 case no. 3204 of 2007 was registered against the present petitioner.

3. It appears from the record that the court below took cognizance of the offence and directed to issue summons for the appearance of the accused-petitioner. Hence, this criminal miscellaneous petition.

4. Learned counsel appearing for the petitioner assailing the order taking cognizance as bad in law and perverse seriously contended that the court below without following the mandates of Section 195 of the Code of Criminal Procedure and the mandates given by the Hon"ble Supreme Court in P.D. Lakhani and another v. State of Punjab and another; (2008) 5 SCC 150 initiated the proceeding though the Supreme Court in the above case has held that Section 195 of the Code contains a bar on the Magistrate to take cognizance of any offence. When a complaint is not made by the appropriate public servant, the court will have no jurisdiction in respect thereof and any trial held pursuant thereto would be wholly without jurisdiction. It was also submitted that in the instant case, the complaint has been filed at the instance of the Investigating Officer and not by the Station Officer in-charge of Bistupur Police Station to whom the complainant had made complaint regarding the theft. It was also submitted that even if assuming the entire allegation to be true in its entirety, no case under Section 182/211 of the Indian Penal Code is made out against the petitioner.

5. Contrary to the aforesaid submission, learned counsel representing the State relying upon the counter affidavit filed at the instance of the State submitted that the Inspector-cum-Officer in-charge of Bistupur Police Station had only supervised in the said case and had given direction to the Investigating Officer-the opposite party no. 2 to submit final form finding the case untrue but in fact, the opposite party no. 2 was the public servant, who had investigated into the matter and he was the competent person to lodge the complaint for initiation of

the proceedings under Section 182/211 of I.P.C.

6. Before I enter into the veils of submissions of both the counsels, for better appreciation of the issue, a reference of Section 195 of the Code is necessary, which is as follows:-

"Section 195.- Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.- (1) No Court shall take cognizance-

(a) (i) of any offence punishable under Sections 172 to 188 (both inclusive of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or (ii) of any offence described in section 463, or punishable under section 471, section 475 of section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or some other Court to which that Court is subordinate]

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3)

(4)

7. From bare reading of the aforesaid provision, it appears that the Section provides for prosecution of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence

and it contains an embargo that no court shall take cognizance of an offence punishable, inter alia, under the aforementioned provision except on the complaint in writing by the public servant concerned or by some other public servant to whom he is administratively subordinate. Apparently in the instant case, the Station Officer in-charge of Bistupur Police Station did not act on the said complaint but entrusted the investigation to the present opposite party no. 2. Undoubtedly, the first information report in that case was lodged at the instance of the Officer in-charge, Bistuppur Police Station to whom the written report was made. The proceedings, therefore, was indisputably initiated at the instance of the Station Officer in-charge, Bistupur Police Station and not by the present opposite party no. 2, who was the Investigating Officer. Whatever action was taken in the matter was pursuant to the order of the Officer in-charge, Bistupur Police Station. In the case P.D. Lakhani (supra), on the instruction of Station House Officer of police station Jalandhar, the complainant Lakhani Rubbger Udyog had approached the Senior Superintendent of Police, Jalandhar with the written complaint where after the S.S.P., Jalandhar directed one Gian Singh to comply with the said request and report and after investigation the said Gian Singh submitted the report and the allegation was found to be untrue. On the report, the S.S.P. directed that no further action is required where after, the Station House Officer of Jalandhar Police Station filed the complaint petition before the Chief Judicial Magistrate for initiation of proceeding under Section 182 Cr.P.C. and the Hon"ble Supreme Court in paragraph-13 of the said judgment held as follows:

"The report of the compliance by Gian Singh was made to the CIA staff, who, in turn, placed it before the Senior Superintendent of Police. The proceedings, therefore, were indisputably, initiated by the Senior Superintendent of Police, Jalandhar and not by the Station House Officer. The Station House Officer would have jurisdiction to investigate into the matter provided a first information report was lodged by him in terms of the complaint made by Appellant 2. Whatever action was taken in the matter was pursuant to the order of Senior Superintendent of Police, Jalandhar".

The Hon"ble Supreme Court in the same judgment relying upon the cases Daulat Ram v. State of Punjab; AIR 1962 SC 1206 and State of U.P. v. Mata Bhikh; (1994) 4 SCC 95 further held as follows:

"This is not a due compliance with the provisions of that section. What the Section contemplates is that the complaint must be in writing by the public servant concerned and there is no such compliance in the present case. The word "subordinate" means administratively subordinate i.e. some other public servant, who is his official superior and under whose administrative control he works."

In the instant case, as I have said the complaint was lodged at the instance of the Investigating Officer, who was junior to the Officer in-charge of Bistupur Police Station and not by a superior officer.

8. In view of the discussions made above, I find merit in the submission of the learned counsel for the petitioner.

9. In the result, the entire criminal proceeding initiated against the petitioner in connection with C/2-3204 of 2007 pending in the court of learned Chief Judicial Magistrate, Jamshedpur and the subsequent order dated 03.10.2007 or any other subsequent order are, hereby, quashed.

10. Accordingly, this criminal miscellaneous petition is allowed.