

(2023) 09 JH CK 0022

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 947 Of 2016

Kaushlendra Kumar Singh And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 11-09-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3)

Citation : (2023) 09 JH CK 0022

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Vijay Kumar Sharma, Priya Shrestha, A.K. Sahani

Final Decision : Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Vijay Kumar Sharma, learned counsel for the petitioners, Mrs. Priya Shrestha, learned counsel for the State and Mr. A.K. Sahani, learned counsel for opposite party no.2.

2. This petition has been filed for quashing the entire criminal proceedings including the order dated 29.03.2016 passed by the learned Sessions Judge, Chatra in Criminal Revision No.18/2015 arising out of Complaint Case No.208/2012.

3. Subsequently, the learned court has taken cognizance vide order dated 03.02.2017 against the petitioners, which has been challenged by filing I.A. No.8126 of 2023.

4. In view of the prayer made in the said I.A. and to avoid multiplicity of the litigation, the prayer made in the said I.A. is allowed.

5. Accordingly, I.A. No.8126 of 2023 is disposed of.

6. In view of that, the order taking cognizance dated 03.02.2017 is also under

challenge.

7. Mr. Sharma, learned counsel for the petitioners submits that initially complaint case was filed by the opposite party no.2 which was sent by the learned court under Section 156(3) Cr.P.C. for registration of the FIR and investigation. The police submitted final form and the petitioners were not sent up for trial. He further submits that a protest petition was filed by opposite party no.2 and on examining the said protest petition, even the learned court has not taken cognizance and the said protest petition was dismissed vide order dated 27.02.2015. He also submits that opposite party no.2 filed Criminal Revision No.18/2015, which was allowed vide order dated 29.03.2016 and the learned revisional court after setting aside the order dated 27.02.2015 remanded the matter to the learned court to pass a fresh order. He submits that the learned court was having no option in view of the observation made in the said criminal revision order and the learned court has taken cognizance against the petitioners.

8. On the other hand, Mr. Sahani, learned counsel for opposite party no.2 submits that there are sufficient materials against the petitioners and the learned revisional court has rightly remanded the matter and subsequently the learned court has rightly taken cognizance against the petitioners.

9. Mrs. Shrestha, learned counsel for the State submits that it appears that the charge-sheet was not submitted against the petitioners, however, on the revisional court's order, the learned court has been pleased to take cognizance.

10. The court has gone through the order taking cognizance dated 03.02.2017. In the said order, the learned court has recorded the facts of sending the matter under Section 156(3) Cr.P.C., submission of the charge-sheet and not taking cognizance on the protest petition vide order dated 27.02.2015. It appears that the learned court has quoted the direction and observation of the revisional court in the said order and, thereafter, he has taken cognizance in view of the observation made in the said criminal revision order. It appears that since there was observation by the learned Sessions Judge, in view of that only he has taken cognizance. There is no independent mind, applied by the learned court in order taking cognizance.

11. In view of that, the order taking cognizance dated 03.02.2017 passed by the learned Chief Judicial Magistrate, Chatra in Complaint Case No.208/2012 is set aside. The matter is remitted back to the learned court to pass a fresh order on its own merit.

12. Accordingly, this petition is disposed of.

13. Interim order, if any granted by this Court, stands vacated.