
(2015) 01 JH CK 0086

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 238 of 2011

Luddu Minya and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 143, 147, 323, 341

Citation : (2015) 01 JH CK 0086

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Sajid Yunus Warsi, for the Appellant; V.S. Sahay, APP, Advocates for the Respondent

Judgement

Rongon Mukhopadhyay, J.—Heard the learned counsel for the petitioners and the learned counsel for the State as well as the learned counsel for the opposite party No. 2.

2. In this application, petitioners have challenged the entire criminal proceeding including the order dated 15.09.2010 by which cognizance of the offence under Section 341/323 of the Indian Penal Code has been taken in connection with Complaint Case No. 954 of 2008.

3. It appears that initially the opposite party No. 2 herein lodged a First Information Report being Barhi P.S. Case No. 54 of 2007 corresponding to G.R. No. 688 of 2007 for the offences punishable under Sections 143, 147, 341 and 323 of the I.P.C. After investigation, police submitted final form showing the aforesaid case i.e., Barhi P.S. Case No. 54 of 2007 as false against the petitioners. On being noticed, the complainant-opposite party No. 2 herein filed a protest cum complaint petition which was registered as Complaint Case No. 954 of 2008 and after examination of the complainant on solemn affirmation and his witnesses, cognizance was taken for the offences under Section 341/323 of the I.P.C.

4. The learned counsel for the petitioners has assailed the impugned order taking cognizance by submitting that the present case has been instituted only with a view to wreck vengeance on the petitioners since in the complaint case while the complainant was examined on solemn affirmation, some new facts have been introduced. He has further stated that the complainant had also mentioned about 3 witnesses who were present at the spot, but those 3 witnesses did not find mention in the First Information Report which was registered earlier. He has submitted that this is a case of malicious prosecution since as per the version of the complainant in the solemn affirmation, there was some dispute in between the complainant-opposite party No. 2 herein and the petitioners with respect to some monetary transactions. He has further submitted that the cognizance order is a non-speaking order and the order itself shows that the learned Judicial Magistrate did not apply his judicial mind while taking cognizance on 15.09.2010.

5. The learned counsel for the opposite party No. 2, on the other hand has submitted that the complaint petition itself reveals about the specific role of the petitioners in the commission of the offence.

6. Having heard the learned counsel for the parties and after going through the records, I find that the First Information Report which was instituted being Barhi P.S. Case No. 54 of 2007 resulted in submission of the final form showing the case false against the petitioners. The protest cum complaint petition prima facie reveals commission of offence by the petitioners which has been stated by the complainant. There has been a specific allegation of assault attributed against all the accused persons. Moreover, the learned counsel for the petitioner has failed to show as to how the present case is a malicious prosecution against the petitioners and that the same has been filed only with a view to wreck vengeance upon the petitioner. In the solemn affirmation also, the complainant-opposite party No. 2 has supported the incident. The powers under Section 482 of Cr.P.C. has to be invoked very sparingly and with circumspection. In my view no case is made out for invoking the inherent powers under Section 482 of the Cr.P.C.

7. In view of the above, there being no reason to interfere with the impugned order, the same is accordingly dismissed.