

(2016) 06 JH CK 0028
In the Jharkhand High Court
Case No : Cr.M.P. No. 1206 of 2003

M/s Philips India Ltd.

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 24-06-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 287, 304A

Citation : (2016) 3 JBCJ 554 : (2016) 3 JLJR 594

Hon'ble Judges : Pradip Kumar Mohanty, J.

Bench : Single Bench

Advocate : Mr. Indrajeet Sinha, Advocate, for the Petitioner; Mr. Krishna Shankar, APP, for the State; Dr. Ashok Kumar Singh and Mr. Vishal Kr. Singh, Advocates, for the O.P. No. 2

Final Decision : Dismissed

Judgement

Mr. Pradip Kumar Mohanty, J.—This is an application under Section 482 of the Code of Criminal Procedure for quashing the entire criminal proceedings initiated against the petitioners in connection with G.R. No. 460 of 2003, arising out of Adityapur Police Station Case no.0165 of 2003 for the offences under Sections 287, 304A, 417, 418 and 420 of the Indian Penal Code, pending in the court of Chief Judicial Magistrate, Saraikella-Kharsawan.

2. From perusal of the materials available on record, it appears that opposite party no.2 initially filed a complaint case being C-1 Case No.55 of 2003 in the court of Chief Judicial Magistrate, Saraikella alleging that the accused persons supplied the materials of inferior quality and deployed bad workmanship for erection, installation and commissioning of twenty meters high mast lights(nine in numbers) along the area of Adityapur-Kandra road, though they were paid the agreed price of Rs. 43,55,100/- as per the contract. The defects having been noticed by the complainant, a letter was also sent to the accused persons on 9.5.2003 to remove the defects. It is further alleged that on 22nd May, 2003 one

high mast light which was created, installed and commissioned near Adityapur Taxi-Maxi stand by the accused persons, collapsed and fell down on one Ambassador Car, which was standing at the parking place and two persons sitting in the said car got injured and one of them, namely, Anup Kumar Das, succumbed to the said injuries on 23.5.2003. It is further alleged that by the said act of the accused persons, the complainant has been cheated to the extent of Rs. 43,55,100/-. It is also alleged that death of Anup Kumar Das and injury to another person was due to the negligence in installation, erection and commissioning of the high mast lights.

3. The said complaint was sent to the police station for instituting a regular police case under Section 156(3) Cr.P.C., and for its investigation, where it was numbered as Adityapur P.S. Case No. 165 of 2003.

4. Heard Mr. Indrajeet Sinha, learned counsel for the petitioners, Mr. Krishna Shankar, learned A.P.P. and Dr.Ashok Kumar Singh, learned counsel for opposite party no.2.

5. Learned counsel for the petitioners submitted that petitioners have been falsely implicated in the present case as there is no material much less sufficient materials against them to put them on trial for the said offence.

6. On the other hand, learned counsel appearing for opposite party no.2 submitted that at this stage, interference by this Court is not warranted, inasmuch as final form in this case has not been submitted as yet by the police. Learned counsel further submitted that only after taking the statement of the witnesses and examining the documents, the investigating officer can apply his mind and submit final form either way. Learned counsel further submits that in view of catena of decisions of the Hon'ble Supreme Court, interference by this Court is not warranted, at this stage.

7. Learned A.P.P. reiterating the submissions made by the counsel appearing for opposite party no.2 submits that, at this stage, no interference is required by this Court and this application deserves to be dismissed.

8. To determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure, the Apex Court in *Rajiv Thapar v. Madan Lal Kapoor*, (2013) 3 SCC 330 has delineated the following steps:

(i) Step one, whether the material relied upon by the accused is sound, reasonable and indubitable i.e. the material is of sterling and impeccable quality ?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusation as false ?

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant ?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the aforementioned steps is in the affirmative, the power vested in the High Court under Section 482 Cr.P.C., can be exercised in favour of an accused.

9. Besides, there is an endless list of judgments rendered by the apex Court declaring the legal position, that inherent power is of an exception nature and is to be exercised in exceptional case for achieving the purposes stated in the Section. If there is some substance in the allegation and material exists to substantiate the complicity of an accused, the case is to be examined in its full conspectus and the proceedings should not be quashed only on the ground that the same had been initiated with mala fides to wreak vengeance or to achieve an ulterior goal. It is also held by the apex Court, that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed materials before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.

10. Coming to the case in hand, where investigation is apparently in progress, this is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution against the accused persons. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused persons is. Even if the accused persons are successful in showing some suspicion or doubt, in the allegations levelled by the prosecution, it would be impermissible to discharge the accused persons before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution, without allowing the complainant to adduce evidence to substantiate the same.

11. In view of the foregoing discussions and keeping in view the principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure, this Court is not inclined to allow the prayer made by the petitioners for quashing the entire criminal proceedings in connection with G.R. No.460 of 2003 arising out of Adityapur Police Station Case No.0165 of 2003. The application is accordingly dismissed.

12. Since, it is a matter of 2003, this Court directs petitioner no.2 (Subrata Sen), who is duly constituted attorney of petitioner no.1, to surrender before learned Chief Judicial Magistrate, Saraikella-Kharsawan on or before 31st July, 2016 and file a bail application. In the event of filing of such an application in the court below, he shall be admitted to bail on such terms and conditions, as may be deemed fit by the learned court below on the same day. This Court further directs the State to complete the investigation of G.R. No. 460 of 2003, arising out of Adityapur Police Station Case no.0165 of 2003 as expeditiously as

possible, preferably within a period of three months and submit final form within the said period. In the event of filing of such final form, the learned court below/ Chief Judicial Magistrate, Saraikella-Kharsawan shall conclude the trial, as expeditiously as possible and preferably within a period of four months thereafter.

13. Registry of this Court is directed to send a copy of this order to the learned Chief Judicial Magistrate, Saraikella-Kharsawan, along with the Case Diary.

14. Let a copy of this order be also provided to Mr.Krishna Shankar, learned A.P.P. for communication to concerned Superintendent of Police.