
(2023) 05 JH CK 0020

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1958 Of 2016

Munna Khan And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 08-05-2023

Acts Referred:

Citation : (2023) 05 JH CK 0020

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Samir Kumar Lall, Ruby Pandey, Chandan Kumar

Final Decision : Allowed/Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Samir Kumar Lall, learned counsel for the petitioners, Mrs. Ruby Pandey, learned counsel for the State and Mr. Chandan Kumar, learned counsel for opposite party no.2.

2. This petition has been filed for quashing of the entire criminal proceeding in connection with Protest cum Complaint Case No.2655/2015, corresponding to Sakchi P.S. Case No.82/2015 and G.R. Case No.1497/2015 including the order taking cognizance dated 17.05.2016, pending in the court of the learned Chief Judicial Magistrate at Jamshedpur.

3. The protest cum complaint petition was filed by opposite party no.2 alleging therein that on 15.05.2015 at about 04:30 p.m., she alongwith her sister Farhat Aara were going to her house by the side of Agrasen Bhawan in Aam Bagan Area, the petitioners closed her way and folded her both hands and misbehave with her and started molesting the opposite party no.2. It was further alleged that both the petitioner threatened her that they will falsely implicate her family member in criminal case which may relates to rape or physical torture. It was also alleged that opposite party no.2 alongwith her sister somehow manage to escape from

the clutch of the petitioners.

4. Mr. Lall, learned counsel for the petitioners submits that the petitioners are cousin brothers of opposite party no.2 and there is dispute of certain property and in that background, the case has been falsely lodged. He further submits that the said case was investigated by the police and final form was submitted whereby the petitioners have not been sent up for trial. He draws attention of the Court to final form, annexed with the petition and submits that the police found that on that day, the mobile location of the petitioners and opposite party no.2 was not found at the place of occurrence and on this background, final form has been submitted. He also submits that on the protest petition, the learned court has taken cognizance, which is against the mandate of law. Even no reason has been assigned for taking cognizance by the learned court.

5. Mr. Kumar, learned counsel for opposite party no.2 submits that there is allegation and the learned court has looked into the enquiry witnesses and thereafter, has taken cognizance, which is in accordance with law. There is no illegality in the order taking cognizance.

6. Mrs. Pandey, learned counsel for the State submits that the police has submitted charge-sheet and thereafter on protest petition, the learned court has taken cognizance.

7. In view of the above submissions of the learned counsel for the parties, the Court has gone through the materials on record including the contents of the protest cum complaint petition as well as final form and the order taking cognizance. Looking into the final form, it transpires that the police has submitted final form stating therein that in mobile location, it was found that the petitioners and opposite party no.2 was not there on that day at the place of occurrence. The police has also stated that no independent witnesses have supported the case of opposite party no.2. However, the learned court has taken cognizance against the petitioners on the protest petition looking into the statement of the enquiry witnesses. Once final form has been submitted and if the learned court is differing with the final form to proceed with the protest petition, at least prima facie materials are required to be disclosed in the order taking cognizance, which is lacking in the case in hand. Further, 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, as has been held by the Hon'ble Supreme Court in *M/S. Pepsi Foods Ltd. & Anr. vs Special Judicial Magistrate & Ors.*; [(1998) 5 SCC 749].

8. In view of the above facts, reasons and analysis, the entire criminal proceeding in connection with Protest cum Complaint Case No.2655/2015, corresponding to Sakchi P.S. Case No.82/2015 and G.R. Case No.1497/2015 including the order taking cognizance dated 17.05.2016, pending in the court of the learned Chief Judicial Magistrate at Jamshedpur are quashed.

9. Accordingly, this petition is allowed and disposed of.

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