

(2023) 10 JH CK 0039

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 913, 1052 Of 2013

Nimisha Sinha And Others

APPELLANT

Vs

State Of Jharkhand And Another

RESPONDENT

Date of Decision : 30-10-2023

Acts Referred:

Citation : (2023) 10 JH CK 0039

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Navin Kumar, Santosh Kumar Shukla, Rajesh Kumar

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Navin Kumar, the learned counsel appearing on behalf of the petitioner in both the cases, Mr. Rajesh Kumar, the learned counsel appearing on behalf of the O.P.No.2(Bank) in both the cases and Mr. Santosh Kumar Shukla, the learned counsel appearing on behalf of the respondent State.

2. In both these petitions, the prayer has been made for quashing of the entire criminal proceeding arising out of Kenduwadih P.S.Case No.59 of 2013 dated 01.04.2013, corresponding to G.R. No.1372 of 2013, pending in the court of learned Chief Judicial Magistrate, Dhanbad.

3. The facts giving rise to the prosecution case is that an officer of the State Bank of India lodged a First Information Report in the concerned police station alleging therein that three partners of Maa Tara Automobiles including the present petitioner opened a cash credit account having limits of Rs.25 lacs for doing business and have also signed loan related agreements as well as hypothecation deeds to the bank officials and have also agreed to work as per the terms of the agreement but inspite of regular requests made by the Bank, their loan account became irregular on 29.02.2012 and when Bank officials visited their shop they found that hypothecated stocks were missing and thus they have cheated the bank hence the present FIR has been lodged.

4. Mr. Navin Kumar, the learned counsel appearing on behalf of the petitioner submits that by I.A. No.8090 of 2023 the prayer is made for quashing the order taking cognizance dated 22.07.2015. He submits that since the matter is pending, this I.A. may kindly be allowed which is being opposed by Mr. Rajesh Kumar, the learned counsel appearing on behalf of the O.P.No.2 (Bank) and submits that belatedly the said order is being challenged in the present I.A.
5. Considering the above submission and pendency of the present petition and to avoid multiplicity of litigation, the prayer made in the I.A. is allowed. The instant I.A. is disposed of. Let this I.A. be treated as part of the main petition.
6. Mr. Navin Kumar, the learned counsel for the petitioner submits that the matter is still pending before the learned court and the order taking cognizance is not in accordance with law. He submits that the learned court has not applied its judicial mind and has passed this order.
7. Mr. Rajesh Kumar, the learned counsel appearing on behalf of the O.P.No.2 (respondent-Bank) submits that the learned court has rightly taken cognizance as the hypothecated goods have been sold by the petitioner(s) in absence of any N.O.C from the Bank.
8. Mr. Shukla, the learned counsel appearing on behalf of the respondent State submits that the learned court has rightly taken cognizance.
9. The Court has gone through the impugned order dated 22.07.2015 and finds that the learned court has taken cognizance by way of filling the name of the accused persons as well as the sections which suggest that there is non-application of judicial mind. In view of that, the impugned order dated 22.07.2015 is set-aside.
10. Both these matters are remitted back to the learned court concerned to pass the order afresh in accordance with law.
11. It is made clear that this Court has not applied its mind on the allegations which are made in the F.I.R.
12. Pending petition, if any, also stands disposed of.