
(2009) 01 JH CK 0022
In the Jharkhand High Court

Prayag Modi and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 07-01-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 34, 341, 379, 384

Citation : (2009) 1 JCR 611

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.N. Tiwari, J.—In this Cr.M.P. the petitioners have assailed the order dated 28.3.2005 passed by the learned Chief Judicial Magistrate, Koderma in T.R. No. 945/05 corresponding to G.R. No. 705/04 arising out of Koderma (T) P.S. Case No. 481/04. By the said order the learned Magistrate has taken cognizance of the offences under Sections 323/341/426/504/34, IPC against the petitioners. The said cognizance has been taken on the complaint lodged by the Informant alleging therein, inter alia, that the petitioners were raising a wall on the adjacent land of the informant by breaking the old wall. When the same was objected by the informant, the petitioners pushed him to fall on the ground and assaulted him by fists and slaps and also snatched Rs. 1,000/- from his pocket.

2. The petitioners have challenged the said order taking cognizance and have submitted that the entire criminal proceeding against them is wholly frivolous, malicious and is an abuse of the process of the Court and the same is liable to be quashed by this Court. It has been stated that the land measuring an area of 5 Decimals was purchased by the petitioners and after getting the said land mutated and getting the building plan sanctioned, they constructed the building over the said land. In the front portion, some land was left vacant for other uses. The land plan has been annexed as Annexure-A to this petition. The O.P. No. 2 has got the adjoining plot. He has constructed the building over the entire plot without leaving any vacant space. From time to time he tried to occupy the

vacant land left by the petitioners to serve his interest. Since the petitioners have not allowed to use the vacant land, they had been implicated in frivolous criminal cases. Earlier on the said dispute the petitioners had approached the police and the municipal authorities. The matters was inquired into and the report was submitted in favour of the petitioners (Annexure-B and C).

3. The O.P. No. 2 has appeared and opposed this Cr M.P. It has been submitted that the petitioners are the wealthy and influential persons had they have been harassing the informant-O.P. No. 2 by claiming the adjoining land. There were civil proceedings and other cases between the parties. Learned Counsel, however, has admitted that there is enmity between the parties arising out of the land dispute.

4. I have heard learned Counsel for the parties and considered their submissions as also the facts and circumstances of the case and also perused the materials appearing on record. On perusal of the reports submitted by the authorities and other documents, it is evident that the dispute between the parties in regarding the claim of interest and possession over the vacant land. From the reports annexed as Annexures-B and C, it is evident that the police have recommended action against the O.P. No. 2 for opening the windows and for digging a pit and storing the dirty water adjacent to the door of the petitioners. It is an admitted fact that there is a land dispute between the parties. Learned Counsel for the O.P. No. 2 has submitted that the petitioners are the wealthy persons. Taking into consideration the said facts and the surrounding circumstances as also the documents on record, the allegations made against the petitioners seem to be highly improbable and unbelievable. Earlier the informant had lodged a complaint vide Complaint Case No. 344/2000 alleging offences under Sections 323/341/384/379/504/34, IPC against the petitioners. The instant case is the second criminal case against the petitioners and the same has been instituted on the allegation of constructing a wall over the land. It is highly improbable that in spite of enmity and earlier litigations (civil and criminal) the informant will go alone to protest the construction of wall to be assaulted and robbed of at the hands of the petitioners. The nature of the allegations suggests that the motive of the informant is to falsely implicate the petitioners in a criminal case in order to wreak vengeance and to achieve the oblique end. It is also quite improbable that the petitioners who are the wealthy persons, as admitted by learned Counsel for the O.P. No. 2, they would snatch Rs. 1,000/- from the informant. Learned Magistrate without taking into consideration the said facts and the circumstances has erroneously taken cognizance of the aforesaid offences subjecting the petitioners to face another criminal charge which has got not possibility to be proved in the circumstances mentioned hereinabove.

5. In view of the above, the impugned order taking cognizance dated 28.3.2005 as well as the entire criminal proceeding based on the basis of the said order are malicious and an abuse of the process of the Court and the same are, hereby, quashed. This Cr. M.P. is allowed.