
(2023) 04 JH CK 0045

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 535 Of 2014

Raj Narayan Pandey And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 28-04-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 202, 482
Indian Penal Code, 1860 — Section 120B, 323, 379, 384, 386, 406, 420, 423, 448,
467, 468

Citation : (2023) 04 JH CK 0045

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Gautam Kumar, Rakesh Ranjan, Ranjit Kumar Tiwari

Final Decision : Allowed/Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Gautam Kumar, learned counsel for the petitioners, Mr. Rakesh Ranjan, learned counsel for the State and Mr. Ranjit Kumar Tiwari, learned counsel for opposite party no.2.

2. This petition has been filed for quashing the entire criminal proceeding including the order dated 07.07.2012 passed in P.C.R. No.68 of 2012, so far as the present petitioners are concerned, pending in the court of the learned Chief Judicial Magistrate, Sahebganj.

3. The complaint case was filed alleging therein that Paras Nath Ray and Raj Narayan Pandey with some anti social elements entered in his room with arms and accused Raj Narayan Pandey on the point of pistol forcibly took the signature of the complainant on six Non-Judicial Paper and gone away. It was further alleged that maximum portion of room which is situated at Mouza Sakrogarh of the complainant has been occupied by the accused persons forcibly. It was also alleged that for the said occurrence, the complainant has filed an Information

Petition before the learned court on 30.01.2012 vide Information Petition No.43 of 2012 and also made complaint to the concerned Police Station and after knowing the same, petitioner no.1 threatened him on mobile and lastly on 15.02.2012 at about 09:00 A.M., petitioner no.3 started to dig near the room of the complainant and on protest, petitioner no.3 with the help of petitioner no.2 snatched her golden chain worth Rs.30,000/- and other accused Radhey Prasad Rai caught hold the complainant and petitioner no.3 entered in his house and took away Rs.10,000/- which is lying on the bed. The complainant was examined on solemn affirmation and witnesses have also been examined under Section 202 Cr.P.C. and ultimately a prima facie case under Sections 448, 323, 504, 506, 379 and 386 of the Indian Penal Code is found against the petitioners and other accused persons and summons issued against them.

4. Mr. Gautam Kumar, learned counsel for the petitioners submits that petitioners are relatives of Tej Narayan Rai and other accused persons. He further submits that the allegation, so far as the present petitioners are concerned, is not made out. He also submits that opposite party no.2 is the brother of Paras Nath Ray (petitioner no.2) and uncle of Arbind Rai @ Arbind Kumar Rai (petitioner no.3). He submits that the complainant wanted to take other properties in question and that is why to make pressure upon the petitioners, the present case has been filed. He further submits that the complainant has also filed Title Suit No.16 of 2012 before the learned Civil Judge, Senior Division No.1, Sahebganj and prayed for decree in favour of the complainant and second prayer was for direction to the defendants to vacate and deliver vacant possession to the complainant. He also submits that the case is of civil in nature and civil case is already pending and also for that, criminal case has been filed. He submits that the case of the petitioner is covered in light of the judgment passed by the Hon'ble Supreme Court in Usha Chakraborty v. State of West Bengal; (AIR 2023 Supreme Court 688).

5. Paragraphs 10 and 11 of the said judgment are quoted herein below:

"10. By non-disclosure the respondent has, in truth, concealed the existence of a pending civil suit between him and the appellants herein before a competent civil court which obviously is the causative incident for the respondent's allegation of perpetration of the aforesaid offences against the appellants. We will deal with it further and also its impact a little later. There cannot be any doubt with respect to the position that in order to cause registration of an F.I.R. and consequential investigation based on the same the petition filed under Section 156(3), Cr.P.C. must satisfy the essential ingredients to attract the alleged offences. In other words, if such allegations in the petition are vague and are not specific with respect to the alleged offences it cannot lead to an order for registration of an F.I.R. and investigation on the accusation of commission of the offences alleged. As noticed hereinbefore, the respondent alleged commission of offences under Sections 323, 384, 406, 423, 467, 468, 420 and 120B, IPC against the appellants. A bare perusal of the said allegation and the ingredients to attract

them, as adverted to hereinbefore would reveal that the allegations are vague and they did not carry the essential ingredients to constitute the alleged offences. There is absolutely no allegation in the complaint that the appellants herein had caused hurt on the respondent so also, they did not reveal a case that the appellants had intentionally put the respondent in fear of injury either to himself or another or by putting him under such fear or injury, dishonestly induced him to deliver any property or valuable security. The same is the position with respect to the alleged offences punishable under Sections 406, 423, 467, 468, 420 and 120-B, IPC. The ingredients to attract the alleged offence referred to hereinbefore and the nature of the allegations contained in the application filed by the respondent would undoubtedly make it clear that the respondent had failed to make specific allegation against the appellants herein in respect of the aforesaid offences. The factual position thus would reveal that the genesis as also the purpose of criminal proceedings are nothing but the aforesaid incident and further that the dispute involved is essentially of civil nature. The appellants and the respondents have given a cloak of criminal offence in the issue. In such circumstance when the respondent had already resorted to the available civil remedy and it is pending, going by the decision in *Paramjit Batra* (supra), the High Court would have quashed the criminal proceedings to prevent the abuse of the process of the Court but for the concealment.

11. In the aforesaid circumstances, coupled with the fact that in respect of the issue involved, which is of civil nature, the respondent had already approached the jurisdictional civil court by instituting a civil suit and it is pending, there can be no doubt with respect to the fact that the attempt on the part of the respondent is to use the criminal proceedings as weapon of harassment against the appellants. The indisputable facts that the respondent has filed the pending title suit in the year 2015, he got no case that he obtained an interim relief against his removal from the office of Secretary of the School Managing Committee as also the trusteeship, that he filed the stated application for an order for investigation only in April, 2017 together with absence of a case that despite such removal he got a right to get informed of the affairs of the school and also the trust, would only support the said conclusion. For all these reasons, we are of the considered view that this case invites invocation of the power under Section 482 Cr.P.C. to quash the FIR registered based on the direction of the Magistrate Court in the aforestated application and all further proceeding in pursuance thereof. Also, we have no hesitation to hold that permitting continuance of the criminal proceedings against the appellants in the aforesaid circumstances would result in abuse of the process of Court and also in miscarriage of justice."

6. On the other hand, Mr. Ranjit Kumar Tiwari, learned counsel for opposite party no.2 submits that filing of civil case is one thing and if the criminality is made out, the present case is also maintainable. He submits that the learned court has rightly taken cognizance.

7. Mr. Rakesh Ranjan, learned counsel for the State submits that the learned court has taken cognizance looking to the solemn affirmation and enquiry witnesses.

8. In view of the aforesaid submissions of the learned counsel for the parties, the Court has gone through the materials on record including the contents of the complaint case and finds that the allegations are made that the petitioners have entered in the house of complainant and forcibly took signature on the partition document. Further Annexure-2 is the document of Panchaity, which suggests that there is partition between the family. Opposite party no.2 has already filed the suit for decree in his favour and for vacating the defendants, which clearly suggest that for civil case, criminal colour has been given by way of filing complaint case. In that view of the matter, the case of the petitioners is fully covered in light of the judgment passed in Usha Chakraborty (supra).

9. In view of the above facts, reasons and analysis, the entire criminal proceeding including the order dated 07.07.2012 passed in P.C.R. No.68 of 2012, so far as the present petitioners are concerned, pending in the court of the learned Chief Judicial Magistrate, Sahebganj is quashed.

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

11. Pending I.As., if any, are disposed of.

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