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**(2018) 04 JH CK 0121**

**In the Jharkhand High Court**

**Case No : Criminal Revision No. 191 of 2008**

RAM BAHADUR PANDEY

APPELLANT

Vs

STATE OF JHARKHAND AND OTHER

RESPONDENT

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**Date of Decision : 12-04-2018**

**Acts Referred:**

Indian Penal Code, 1860 — Section 34, 39, 319, 323, 341, 427, 448, 506  
Code of Criminal Procedure, 1973 — Section 161

**Citation : (2018) 04 JH CK 0121**

**Hon'ble Judges : Rongon Mukhopadhyay, J**

**Bench : Single Bench**

**Advocate : Kalyan Roy, Mukesh Kumar Sinha**

**Final Decision : Allowed**

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## **Judgement**

1. Heard Mr. Kalyan Roy, learned counsel, appearing for the petitioners and Mr. Mukesh Kumar Sinha, learned APP for the State.Â Â Â

2. This application is directed against the judgment dated 04.08.2007 passed by learned 10th Additional Judicial Commissioner-cum-3rd Special Judge,

CBI (AHD Scam Cases), Ranchi, whereby and whereunder, the judgment of conviction and the order of sentence dated 23.03.2007 passed by

learned Judicial Magistrate, Ranchi in G.R. Case No. 553 of 2002 (T.R. No. 260 of 2007),Â arising out of Sadar P.S. Case No. 28 of 2002,

convicting the petitioners for the offences punishable u/s 323/34 of the Indian Penal Code, has been affirmed and the sentence of 6 month R.I. has

been modified by giving the benefit under the Probation of Offenders Act to the petitioners. So far as the conviction made by the learned Judicial

Magistrate with respect to Sections 341/448/427/506/34 of the Indian Penal Code is concerned, the same was set aside by the learned appellate

court.Â

3. It has been stated by Mr. Kalyan Roy, learned counsel for the petitioners that the petitioners have been acquitted for the offence u/s

341/448/427/506/34 of the Indian Penal Code in view of the statement given by P.W. 6, which according to the learned appellate court was considered

to be trustworthy.Â It has been stated that P.W. 6 has disclosed that there was an exchange of words between the informant and the petitioners and

he had not alleged about any assault committed by the petitioners upon the informant and taking into consideration the evidence of P.W. 6, the

petitioners could not have been convicted for the offence u/s 323/34 I.P.C. It has further been submitted that the act of the petitioner even if it is

assumed to be true then also it was not a voluntarily act to cause hurt to the informant.Â It has also been stated that the informant is the caretaker of

the property in question and this fact had been initially suppressed. It has been further submitted that the house of the petitioners and the disputed land

is nearby and there is prior civil litigation between the parties and therefore it has been opined by learned appellant court that the false implication

could not be denied in view of the said dispute. Learned counsel thus submits that the petitioners in the aforesaid facts and circumstance of the case

deserves to be acquitted from the charges levelled u/s 323/34 I.P.C.Â Â Â Â

4. Mr. Mukesh Kumar Sinha, learned APP appearing for the State has vehemently opposed the prayer made by the petitioners.Â

5. The prosecution story in brief is that on the date of occurrence when he reached the land situated under Khata No. 100, Plot No. 419 of Village

Kokar, Ranchi, he had seen the petitioners and other persons, who were armed with Khanta, Gainta and other articles, had been breaking the wall of

the half constructed house of the informant. It has been alleged that on a protest being made by the informant, the petitioners had abused and also had

assaulted him, which resulted in the informant receiving a simple injury. Allegation has also been leveled that in course of assault, Rs. 1500/- was

forcibly snatched from the possession of the informant. The informant had also disclosed the name of certain persons who were present at the place

of occurrence. The informant has also alleged that after demolishing his half built house, the petitioners had taken away about 10 of bags cement, iron

sheet, pipe, bricks, etc., which were kept in the godown and it was worth Rs.

15,000/- . In his fardbeyan, the informant has also disclosed that one Santsoh Kumar Singh @ Jiwan Lal had made an agreement of the land as aforesaid with the informant and the house was being constructed, which had been demolished by the petitioners, as they had also been claiming the land.

6. On the basis of the aforesaid informant Sadar P.S. Case No. 28 of 2002 was instituted for the offences punishable u/s 341,323,379,427,506,448 and 34 of the Indian Penal Code. Investigation resulted in submission of charge-sheet and after cognizance was taken, charge was framed for the offences punishable u/s 341,323,427,506,448 and 34 of the Indian Penal Code and trial proceeded.

7. The learned trial court vide judgment dated 23.03.2007 had convicted the petitioners for the offences punishable under Sections 323/341/448/427/506/34 of the Indian Penal Code and sentenced them accordingly. An appeal being preferred by the petitioner being Cr. Appeal No. 94 of 2007 led to passing of the judgment dated 04.08.2007 in which the petitioners were acquitted from the charges leveled against them under Sections 341/448/427/506/34 of the Indian Penal Code. However, the learned appellate court affirmed the conviction of the petitioner u/s 323/34 of the Indian Penal Code and modified the sentence of 6 month R.I. by giving them benefit of the Probation of Offenders Act.

8. In course of trial 6 witnesses were examined on behalf of the prosecution. P.W. 1, Binod Kumar Yadav had stated that on the date of occurrence, he was going to a finance company, which was near the place of occurrence, wherein he had seen that some persons were breaking the wall of Ramesh Singh with the help of various articles. He had disclosed that the informant had tried to prevent them, but all the three accused persons abused and thereafter caused assault upon him. P.W. 2 Ranjit Singh who is also said to be an eye witness to the occurrence has stated about the assault and that abuse committed upon the informant by the petitioners. P.W. 3 Ramesh Singh is the informant of this case and he has stated that an agreement was entered into with one Sanjiv Singh in respect of 5 Kathas of land and the said Sanjiv Singh had empowered him to look after the land vide a written authority. This witness had stated that on 22.02.2002 at about 2 p.m., the petitioners and their associates were breaking the wall and on a protest being made by the informant he was assaulted with fists and slaps

and certain article were forcibly snatched away from his possession.

P.W. 4 Shibu Ram Paswan did not support the prosecution case and therefore he was declared hostile. P.W. 5 is the Investigating Officer of the case

who had inspected the place of occurrence and had also taken statement of the witnesses u/s 161 Cr.P.C. and on conclusion of investigation, this

witness has submitted charge-sheet against the accused persons. P.W. 6 Vidya Prasad Singh is also an eye witness to the occurrence who had stated

that he had on the fateful day gone to meet the informant but he was not in his house. This witness had seen that there was a hue and cry between

the informant and the petitioners. He had also seen the wall having been demolished. This witness has further stated that there was a heated

altercation between the petitioners and informant.Â Â

9. The defence has also examined DW 1 Rajesh Bhushan Sao, who had stated that the disputed land was in the name of his grandfather and after his

death, his father inherited the said land. He has further stated that his father sold 5 Kathas of land which is the disputed property to the petitioners in

2000 itself.Â

10. The prosecution has also exhibited several documents countering the claim of the petitioners that the land actually belonged to Sanjiv Singh.Â

11. On consideration of the arguments of the learned counsel for the parties and ongoing through the Lower Court Records, it appears from the oral

evidence that P.W. 1, 2 and 3 have stated that the petitioner were trying to demolish the half constructed house of the informant and on being objected

to, the informant was subjected to abuse and assault. P.W. 3 in the

Fardbeyan had disclosed about he being the owner of the land. Subsequently it came to light that the informant was merely the care taker of Sanjiv

Singh who had given Power of Attorney to the informant. P.W. 6 in very categorical terms had stated about the fact that there was heated exchange

of words between the petitioners and the informant. It is an admitted fact that there was a dispute with respect to the property in question and in fact

considering the evidence of P.W. 6 as also the fact that a civil litigation was going on between the parties and the false implication of the petitioners

could not be ruled out, the learned appellate court has opined so in his impugned judgment, while disbelieving the charge made against the petitioners

u/sÂ Â 341/448/427/506/34 of the Indian Penal Code. However, the learned

appellate court has relied upon the deposition of P.W. 6 while affirming the conviction of the petitioners for the offences punishable u/s 323/34 of the Indian Penal Code. P.W. 6 did not disclose about any assault committed by the petitioners upon the informant which fact appears to be not properly appreciated by the learned appellate court. PW 1, 2 and 3 have supported the allegation of assault as against PW 3.

12. As to whether, in the facts and circumstances, the petitioners could be convicted for the offences punishable u/s 323 I.P.C., it would be apt to refer to Section 323, which reads as under:-

323. Punishment for voluntarily causing hurt.- Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

The term "Voluntarily" has been defined u/s 39 I.P.C., which reads thus:-

39. "Voluntarily".- A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Section 319 defines the word "hurt" which is whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

13. The evidence of the defence has to be seen in the context of the provisions of Section 39, 319 and Section 323 I.P.C. It is admitted fact that the

informant at the initial stage had disclosed about he being the owner of the land, but the same was subsequently diluted in view of the documentary

evidence as well as the evidence of P.W. 3 from which it would appear that the informant was merely a caretaker of the property in question. The

evidence of D.W. 1 has also not been properly appreciated by the learned courts below. DW 1 in very categorical terms has stated that the property

in question was mutated in the name of his grandfather and upon his death, his father inherited the property, who had subsequently sold 5 Kathas of

land to the petitioner No. 1. The contents of the defence witnesses have also to be suitably considered by the learned trial court as that of the

prosecution witnesses. The evidence of D.W. 1 cannot be brushed aside since the

same also have to be given due weightage which in most of the cases does seem to be given a complete go by.

14. Coming back to the allegation levelled against the petitioners u/s 323 I.P.C., the act of the petitioners cannot be said to be a voluntarily act to cause hurt to the informant. In this regard, reference is once again made to the evidence of P.W. 6, who has concentrated his evidence merely with respect to heated exchange of words between the petitioners and the informant. The fact circumstances of the case does make the incident unbelievable, as the petitioners on the one hand were claiming the property, which has also been claimed by the informant being the caretaker of Sanjiv Singh. Act of the petitioners even if it is assumed to be correct cannot be said to be a voluntarily act in terms of Section 39 I.P.C. as in the evidence of none of the witnesses "hurt" having not been proved to have been committed by the petitioners. The intent as well as subsequent result of such intent is abysmally absent from the statement of the witnesses so recorded. The learned appellate court had aptly given a finding that in view of the civil litigation between the parties, false implication of the petitioners cannot be ruled out which resulted in acquittal of the petitioners for the charge u/s 341/448/427/506/34 of the Indian Penal Code.

15. The circumstances enumerated above thus do not point to an act which would come within the penal provision of Section 323 I.P.C. As a consequence to the discussions made hereinabove, the judgment dated 04.08.2007 passed by learned 10th Additional Judicial Commissioner-cum 3rd Special Judge, CBI (AHD Scam Cases), Ranchi with respect to the conviction of the petitioners for the offences punishable u/s 323/34 of the Indian Penal Code is hereby set aside. This application stands allowed and the petitioners are discharged from the liability of their bail bonds.