

(2023) 08 JH CK 0065

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1915 Of 2017

Ram Prakash Meena And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 31-08-2023

Acts Referred:

Indian Penal Code, 1860 — Section 323, 426, 448, 504, 506
Public Premises (Eviction Of Unauthorized Occupants) Act, 1971 — Section 5
Code Of Criminal Procedure, 1973 — Section 197, 197(1)

Citation : (2023) 08 JH CK 0065

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Anil Kumar, Chandana Kumari, Santosh Kumar Shukla, Arbind Kumar

Final Decision : Allowed/Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Anil Kumar, learned A.S.G.I. appearing for the petitioners, Mr. Santosh Kumar Shukla, learned counsel for the State and Mr. Arbind Kumar, learned counsel for opposite party no.2.

2. This petition has been filed for quashing of the entire criminal proceedings arising out of C/1 Case No.4714 of 2013 including the order taking cognizance dated 20.01.2016, pending in the court of the learned Judicial Magistrate, 1st Class at Jamshedpur. The further prayer is made for quashing the order dated 24.06.2016, whereby, bailable warrant of arrest has been directed be issued against the petitioners.

3. The complaint case was filed by opposite party no.2 alleging therein that he is a senior citizen and because of his advance age, he could not look after his property situated at his native village and authorized his younger brother, namely, Srinivas Rai to look after and manage the aforesaid property situated at near Gurdi Market, P.S. Bagbera, Town Jamshedpur, District- East Singhbhum. It

was further alleged that the complainant informed the Railways authority about this his act. The Railways allotted the aforesaid plot but increased the rate of yearly rent arbitrarily by multiplying, for which a writ petition being W.P(C) No.1857 of 2009 was filed before this Court. The complainant applied for mutation of his name before the Assistant Engineer, South Eastern Railway, Tatanagar on 06.08.1984 and on subsequent dates. It was also alleged that the local Railway Officers were threatening for taking coercive step by the help of local administration and to that effect news was published in local Hindi newspaper on 01.11.2013. It was further alleged that the representations were made to the Sub-Divisional Officer, Dhalbhum at Jamshedpur on 20.11.2013, but EC No. 05 of 2011 was filed before the Estate Officer, South Eastern, Chakradharpur, wrongly in the name of the complainant's brother, namely, Sri Nivas Rai, which was disposed of on 26.09.2013 passed by the said Estate Officer in respect of the aforesaid land in question. Sri Nivas Rai preferred a Misc. Case No.17 of 2013 against the said ex-parte order dated 26.09.2013 before the court of the learned Principal District Judge, East Singhbhum at Jamshedpur, which was dismissed. It was also alleged that on 18.11.2013, the petitioner no.1 in collusion and connivance with petitioner no.2 and his subordinate staff trespassed into the complainant's aforesaid house premises in his absence and damaged the belongings of the complainant and assaulted, insulted, outraging the dignity of the complainant's brother and threatened his brother Srinivas Rai unauthorizedly and further warned him to demolish the structures of the complainant. However, because of strong objection made by the neighbouring people of the locality, the petitioners returned back along with their staff. According to the complainant, the offence under Sections 323/426/448/504/506 of the Indian Penal Code was made out as against the petitioners.

4. Mr. Anil Kumar, learned A.S.G.I., appearing for the petitioners submits that petitioner no.1 was posted as Assistant Divisional Engineer (1), Tatanagar of the South Eastern Railway and petitioner no.2 was posted as Chief Law Assistant at Chakradharpur Division of the South Eastern Railway. He submits that the brother of opposite party no.2 had encroached upon certain premises of the Railways and he was using the premises for shopping and residential purpose. He further submits that notice dated 04.05.2011 was issued to Srinivas Rai, who filed his show-cause on 27.06.2011 and the Railways filed rejoinder. Before the Estate Officer and vide order dated 26.09.2013, the Estate Officer has been pleased to direct the said Srinivas Rai and other persons, who were in occupation, to vacate the said premises within 15 days. He submits that the said order was passed by invoking Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. He submits that the senior officials of the Railways directed and authorized the petitioners to execute the said order passed by the Estate Officer. He submits that Srinivas Rai filed an appeal being Misc. Appeal No.17 of 2013 challenging the order dated 26.09.2013 passed by the Estate Officer in EC Case No.05 of 2011. In the appeal, no stay was granted and the said appeal was dismissed vide order dated 31.05.2016 by the learned

District Judge-VI at Jamshedpur. He also submits that the petitioners were posted as officers of the South Eastern Railway and they were only discharging their official duty and if such a situation was there, they are protected under Section 197 Cr.P.C.

On these grounds, he submits that the entire criminal proceeding is an abuse against the petitioners, who happened to be the Government officials.

5. On the other hand, Mr. Santosh Kumar Shukla, learned counsel for the State submits that it appears that the learned court has taken cognizance pursuant to the complaint case.

6. Mr. Arbind Kumar, learned counsel for opposite party no.2 justified the order taking cognizance on the ground that the said order was passed looking to the solemn affirmation and enquiry witnesses and no case of interference is made out. He further submits that what has been argued by the learned senior counsel for the petitioners, that can only be examined in the trial.

7. In view of the above submissions of the learned counsel for the parties and going through the documents, it appears that the said Srinivas Rai, who happened to be brother of opposite party no.2 was in illegal occupation of the premises of the Railways and for that the Estate Officer has directed him to vacate the premises, vide order dated 26.09.2013. The said order was challenged in appeal, which was also dismissed. In this background, it appears that in a mala fide way, the present case has been filed against the petitioners, who happened to be the Railway officers and posted as Assistant Divisional Engineer (1), Tatanagar of the South Eastern Railway and Chief Law Assistant at Chakradharpur Division of the South Eastern Railway.

8. The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with a previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from his office save by or with the sanction of the Government touches the jurisdiction of the court itself. A reference may be made to the judgment passed by the Hon'ble Supreme Court in *Abdul Wahab Ansari v. State of Bihar and another*; [(2000) 8 SCC 500]. Paragraph 7 of the said judgment reads as under:

"7. Previous sanction of the competent authority being a precondition for the court in taking cognizance of the offence if the offence alleged to have been committed by the accused can be said to be an act in discharge of his official duty, the question touches the jurisdiction of the Magistrate in the matter of taking cognizance and, therefore, there is no requirement that an accused should wait for taking such plea till the charges are framed. In *Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhushan* a similar contention had been advanced by Mr Sibal, the learned Senior Counsel appearing for the appellants in

that case. In that case, the High Court had held on the application of the accused that the provisions of Section 197 get attracted. Rejecting the contention, this Court had observed: (SCC pp. 217- 18, para 23)

"The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with a previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from his office save by or with the sanction of the Government touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance, the accused after appearing before the court on process being issued, by an application indicating that Section 197(1) is attracted merely assists the court to rectify its error where jurisdiction has been exercised which it does not possess. In such a case there should not be any bar for the accused producing the relevant documents and materials which will be ipso facto admissible, for adjudication of the question as to whether in fact Section 197 has any application in the case in hand. It is no longer in dispute and has been indicated by this Court in several cases that the question of sanction can be considered at any stage of the proceedings."

The Court had further observed: (SCC pp. 218-19, para 24) "The question of applicability of Section 197 of the Code and the consequential ouster of jurisdiction of the court to take cognizance without a valid sanction is genetically different from the plea of the accused that the averments in the complaint do not make out an offence and as such the order of cognizance and/or the criminal proceedings be quashed. In the aforesaid premises we are of the considered opinion that an accused is not debarred from producing the relevant documentary materials which can be legally looked into without any formal proof, in support of the stand that the acts complained of were committed in exercise of his jurisdiction or purported jurisdiction as a public servant in discharge of his official duty thereby requiring sanction of the appropriate authority."

9. In view of the above facts and considering that the complainant happened to be brother of the said Srinivas Rai, against whom, the Railways has taken action for eviction and he lost up to the appeal and the present case against the petitioners appears to be malicious.

10. Accordingly, so far as the present petitioners are concerned, the entire criminal proceedings arising out of C/1 Case No.4714 of 2013 including the order taking cognizance dated 20.01.2016, and order dated 24.06.2016, pending in the court of the learned Judicial Magistrate, 1st Class at Jamshedpur are quashed.

11. This petition is, therefore, allowed and disposed of.

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