

(2021) 08 JH CK 0025

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1637 Of 2019

Ranjana Burman

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 10-08-2021

Acts Referred:

Indian Penal Code, 1860 — Section 353, 504

Code Of Criminal Procedure, 1973 — Section 197, 482

Citation : (2021) 08 JH CK 0025

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Dhananjay Kumar Dubey, Afaque Ahmed

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Dhananjay Kumar Dubey, the learned counsel for the petitioner and Mr. Afaque Ahmed, the learned counsel appearing on behalf of the

Opposite Party.

2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising

due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been

heard.

3. This petition has been filed for quashing the order taking cognizance dated 23.04.2011 including the entire criminal proceeding in connection with

Complaint Case no.685 of 2010, passed by the learned Chief Judicial Magistrate, Koderma.

4. The complaint case was filed on following premises:

The father of the complainant, namely, Jamal Mian was suffering from cancer and he belongs to the category of B.P.L Treatment of the complaint's

father was going on in Abdul Rajjak Ansari Cancer Institute, Ranchi and for the treatment of his father, regional M.L.A had made recommendation

for Government assistance. For getting the government assistance, the complainant had been approaching the petitioner for the last three days for

attesting some documents i.e. photographs, identity proof, income certificate, certificate of B.P.L, but the petitioner (accused) ousted the complaint

using abusive language and stated that she does not do the work of Miyan. She further stated that if you desire to get the work done, you have to pay

Rs.5,000/- otherwise you will be implicated, declaring the agent of I.S.I for which the complainant made complaint before the Vice Chairman, Jhumri

Tilaiya Municipality-cum-Member of Parliament, Koderma. It is further alleged that, thereafter, again the complainant along with witnesses went to

the Block Office on 03.08.2010 and requested the accused-petitioner to do the work upon which the accused-petitioner became violent and

misbehaved with the complainant and witnesses and also abused them and denied to attest the said documents for which information has been given to

all concerned authorities but nothing has been done. It is further alleged that in absence of attested documents, the complainant was not able to get the

amount of government assistance, resulting the death of his father.

5. Mr. Dhananjay Kumar Dubey, the learned counsel appearing on behalf of the petitioner submitted that the petitioner was appointed as Deputy

Collector in the State of Bihar and after bifurcation of the State of Bihar, the petitioner was allocated State of Jharkhand cadre. He further submitted

that the petitioner was functioning as Block Development Officer, Dumri in the district of Giridih and she was transferred by notification dated

06.02.2009 from Dumri to Koderma in the capacity of Block Development Officer, Koderma Sadar. She took over the charge of the office of Block

Development Officer, Koderma Sadar. While the petitioner was discharging her duty as Block Development Officer, Koderma Sadar, on 05.08.2010

in the official chamber, one Anwarul Haque, Vice Chairman of Koderma Municipality entered into her chamber and asked for a list of scheme which

is going on and also threatened her to ruin her. Mr. Dubey, the learned counsel

submitted that no scheme was in operation at that time in that Block.

The said person while going outside the chamber has threatened the petitioner. The petitioner sent an application before the Officer Incharge of

Tilaiya Police Station for taking appropriate step against the said person. On the basis of said application, a First Information Report was instituted

being Tilaiya P.S. Case No. 315 of 2010 dated 08.08.2010 corresponding to G.R. No. 629/2010 under sections 353 and 504 of the Indian Penal Code in

which said Anwarul Haque was made an accused. The police investigated and charge sheet was submitted under section 504 IPC in that case on

30.09.2010. He further submitted that in the month of October, 2010 another notification was issued which was numbered as 6036 dated 04.10.2010

whereby the petitioner's service has been transferred from Koderma to the Revenue Department for making proper posting as Deputy Collector Land

Reforms. In compliance of the said transfer order, the petitioner has been posted as Deputy Collector Land Reforms, Palamau. The petitioner handed

over the charge of her office to one Sujata Kujur on 12.10.2010 who was transferred in her place by the said notification. While discharging the duty

of Deputy Collector Land Reform, Palamau, the petitioner came to know in the month of April, 2011 that one complaint case has been lodged against

her in the court of learned Chief Judicial Magistrate, Koderma being Complaint Case no. 685 of 2010 and after getting the knowledge of the same, she

inquired into the matter and thereafter she came to know that the said complaint has been filed against her on 11.10.2010 in which the said Anwarul

Haque was made one of the witness. He submitted that thereafter the petitioner has filed this quashing application which was taken up by this Court

on 16.01.2012 and interim protection was provided to the petitioner.

6. Mr. Dubey, the learned counsel assailed the impugned action on the ground that the petitioner was discharging her official duty and in course of her

discharging that duty she was threatened and for that she has instituted the First Information Report in which charge sheet has been submitted against

the said Haque and in retaliation, the said Haque got the said complaint case filed in which he has been shown as one of the witness. He further

submitted that the petitioner is required to be protected under section 197 Cr.P.C as during the discharge of the duty if anything has happened without

any sufficient cause is not required to be instituted. He further submitted that

the complaint case has been lodged after much delay of filing the First Information Report which is enough to suggest that it was a counterblast case. He relied in the case of *Deo Lakhan Paswan v. State of Jharkhand and Anr.* reported in 2012 (1) JLJR 206 (SC). On the point of sanction he relied in the case of *Jagat Narayan Prasad v. State of Jharkhand* in Cr.M.P.No.148 of 2011 dated 23.03.2021. On the point of malicious proceeding he relied in the case of *Kumar Jitendra Singh v. State of Jharkhand and Anr.* reported in 2012(2) JLJR 372 (Jhar) and *D. Devaraja v. Owais Sabeer Hussain* reported in (2020) 7 SCC 695.

7. On the other hand, Mr. Afaq Ahmed, the learned counsel appearing on behalf of the Opposite Party No.2 submitted that there is allegation in the complaint petition and at this stage this Court may not roam into to come to the conclusion that no case is made out against the petitioner. He submitted that there is allegation against the petitioner in the complaint. He further submitted that so far section 197 Cr.P.C is concerned, that is not attracted in the case in hand as that allegation in the complaint is not in the nature of discharging the official duty. To buttress this argument, he relied in the case of *L. Narayana Swamy v. State of Karnataka and Others* reported in (2016) 9 SCC 598 and *Choudhary Parveen Sultana v. State of West Bengal and Another* reported in (2009) 3 SCC 398. By way of relying on these two judgments, Mr. Afaq Ahmed, the learned counsel submitted that the allegations made in the complaint are not the duties to be discharged at the time of official work. He submitted that in these two cases, the Hon'ble Supreme Court interfered with the matter as for the allegation in those cases, section 197 Cr.P.C was not attracted. Similar is the case in hand and on that ground, the quashing application is fit to be dismissed.

8. It is an admitted fact that the petitioner was a Government servant. It has been submitted at Bar by Mr. Dubey, the learned counsel appearing for the petitioner that the petitioner has retired. While the petitioner was working in the capacity of Block Development Officer in Koderma District, the said Haque had entered into her chamber and threatened her and for that the petitioner had lodged an F.I.R in which charge sheet has been submitted against the said Haque. In complaint case, the said Haque is made an witness as witness no.1. The petitioner came to know about that complaint case

while she was transferred and was working at Palamau. The F.I.R was lodged on 08.08.2010. The date of occurrence is disclosed in the complaint

case on 03.08.2010 and 10.10.2010 and the complaint was filed on 11.10.2010. Thus, there is delay of filing of the complaint case at least of 2 months

3 days. The allegation is also made in the complaint that the petitioner has not certified certain documents. The attestation of certificate comes under

the official duty, however, there are further allegations about demanding money which are not official duty. The petitioner was transferred from

Koderma to Revenue Department and handed over the charge on 12.10.2010 and the complaint case was filed on 11.10.2010. The petitioner filed the

F.I.R against the said Haque on 08.08.2010. Thus, the complaint was filed atleast after 2 months 3 days' delay as date of occurrence in the complaint

is disclosed as 03.08.2010 and 10.10.2010. There is no doubt that at this stage the Court is not required to evaluate the truthfulness or otherwise of the

allegations levelled against the petitioner, but the materials on record suggests that the complaint filed by the petitioner was a counterblast to wreak

vengeance. The initiation of the complaint was not a bona fide exercise by the Opposite Party no.2. A reference may be made in the case of

â??Rajiv Thapar v. Madan Lal Kapoorâ? which has been referred in the case of â?? Suresh Kumar Goyal v. State of U.P.â?, reported in (2019) 14

SCC 318, wherein while dealing with the jurisdiction under Section 482 Cr.P.C to quash the proceedings at the stage of issuance of process, the

Hon'ble Supreme Court at paragraph no.12 referred the paragraph nos.28 and 29 of the said judgment wherein it has been held as under:

â??12. While dealing with the jurisdiction under Section 482 CrPC to quash the proceedings at the stage of issuance of process, or at the stage of

committal, or at the stage of framing of charges, that is to say before the commencement of actual trial, in the light of material placed on record by the

accused, this Court in Rajiv Thapar v. Madan Lal Kapoor laid down as under: (SCC pp. 347-48, paras 28-30)

â??28. The High Court, in exercise of its jurisdiction under Section 482 CrPC, must make a just and rightful choice. This is not a stage of evaluating

the truthfulness or otherwise of the allegations levelled by the prosecution/ complainant against the accused. Likewise, it is not a stage for determining

how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations

levelled by the prosecution/ complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/ complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position that in a case where the prosecution/ complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/ complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/ their defence is based on sound, reasonable and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/ complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/ complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted,

being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to

dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to

exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the

ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for

quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges leveled against the accused i.e.

the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a

reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that

it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings

in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court

time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would

not conclude in the conviction of the accused.â??

9. Even assuming that the petitioner was not discharging her duty in the official capacity and section 197 Cr.P.C was not attracted as argued by the

learned counsel appearing on behalf of the Opposite Party No.2, this case is fit to

be interfered with as it was filed as a counterblast case against the petitioner and that too, one day prior to the handing over of the charge from that place; even ignoring the point of section 197 Cr.P.C, this case is fit to be interfered with.

10. A reference may be made to the case of *Pratibha Rani v. Suraj Kumar*, reported in (1985) 2 SCC 370, wherein consideration before the

Hon'ble Supreme Court was with regard to complaint case, in which at paragraph no.70, it was held as under:

70. In a petition under Section 482 CrPC for quashing a criminal complaint, the allegations made in the complaint have to be taken to be correct in order to find out whether they constitute the various ingredients of the offence alleged. In *Nagawwa v. Veeranna Shivalingappa Konjalgi* illustrations

have been given of cases in which it may be safely held that an order of a Magistrate issuing process against an accused can be quashed or set aside.

They are: (SCC p. 741, para 5)

(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value

make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by a legally competent authority and the like.

11. The case of the petitioner is coming under direction no.30.4 of *Rajiv Thapar v. Madan Lal Kapoor* (supra) and no.70.1 of *Pratibha Rani v. Suraj Kumar* (supra).

12. Accordingly, the impugned order dated 23.04.2011 order taking cognizance and the entire criminal proceeding in connection with Complaint Case

no.685 of 2010 are quashed.

13. Cr.M.P. No.1637/2011 stands allowed and disposed of.

14. I.A., if any, stands disposed of.