

(2024) 10 JH CK 0019

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 4354 Of 2022

Sharad Chandra Dudhani @ Sharat Chandra Dudhani @
Sharat Dudhani

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 01-10-2024

Acts Referred:

Code of Civil Procedure, 1908 — Section 47, 151

Code Of Criminal Procedure, 1973 — Section 313

Indian Penal Code, 1860 — Section 34, 380, 420, 442, 445, 453, 454

Citation : (2024) 10 JH CK 0019

Hon'ble Judges : Anil Kumar Choudhary, J

Bench : Single Bench

Advocate : Shailesh Kr. Singh, Shiv Shankar Kumar, Jasvinder Mazumdar

Final Decision : Allowed

Judgement

Anil Kumar Choudhary, J

1. Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure with a prayer to quash and set aside the entire criminal proceeding arising out of C.P. Case No.3656 of 2019 including the order dated 15.09.2022 passed by learned Judicial Magistrate-1st Class, Dhanbad whereby and where under the learned Judicial Magistrate-1st Class, Dhanbad has found prima facie case for the offences punishable under Sections 380, 453, 454, 420/34 of the Indian Penal Code against the petitioners.

3. The allegation against the petitioners is that the petitioners on 21.11.2019 at about 10:00 am went to the place of occurrence which the complainant claims to be a Government land encroached upon by him and told him to vacate the land and put a lock on the premises. Later on, the complainant obtained the

documents from the court and found that the Nazir of Civil Court has misused his power. It is also alleged that the said Nazir was accompanied by the petitioner No.1 and the petitioner Nos.2 and 3 are the staffs of the petitioner No.1. The complainant filed a petition to be impleaded as a party in Execution Case No.13 of 1986 of the court of Sub Judge-I, Dhanbad. It is also alleged that on 22.11.2019, the accused persons of the case demolished the shop of the complainant and took his articles worth Rs.7-8 lakhs.

4. Learned counsel for the petitioners draws the attention of this Court towards the Annexure-6 which is the copy of the certified copy of the order dated 10.02.2020 passed by the Civil Judge (Senior Division)-1st, Dhanbad in M.C.A. No.664/2019 and M.C.A. No.665 of 2019 arising out of Execution Case No.13 of 1986 which was filed to execute the decree passed in Title Suit No.56 of 1983 and submits that therein it has categorically been held by the Civil Judge (Senior Division)-1st, Dhanbad that the complainant was not a party to the dispute and the decree has been passed in favour of the petitioner No.1 in respect of the suit land and there is no document which could be put forth by the complainant who filed the petition to be impleaded as party in the said Execution Case and also another petition under Section 47 read with Section 151 of the Code of Civil Procedure that they have encroached upon the land of the petitioners during the pendency of the case, in collusion with the judgment debtors of the said execution case. It is next submitted that before the Civil Judge (Senior Division)-1st, Dhanbad the complainant admitted that the delivery of possession of the land in question was given to the petitioner No.1. It is then submitted that, so it being an admitted case of the complainant that the petitioner has been put into possession of the place of occurrence land by the due process of law, by execution of a decree passed by the court of competent jurisdiction, hence, there is no question of any dishonest intention on the part of the petitioners to take any property out of the possession of anyone else because admittedly when the petitioner No.1 was put in possession of the property it cannot be said that he has taken the property out from his own possession. Therefore, the offence punishable under Section 380 of the Indian Penal Code is not made out against the petitioners.

5. It is next submitted that similarly in the absence of any allegation of cheating and thereby dishonestly inducing the complainant or anyone else to deliver any property, the offence punishable under Section 420 of the Indian Penal Code is not made out against the petitioners. It is next submitted that as the petitioner No.1 was admittedly put in possession of the land in question, the question of trespassing or house-breaking is not made out and in the absence of the same; neither the offence punishable under Section 453 nor the offence punishable under Section 454 of the Indian Penal Code is made out against the petitioners.

6. It is lastly submitted that as the complainant has not challenged the said order dated 10.02.2020 passed by the Civil Judge (Senior Division)-1st, Dhanbad, so, the said order has reached finality. Hence, the continuation of this criminal

proceeding against the petitioners will amount to abuse of process of law. Therefore, it is submitted that the prayer of the petitioners, as prayed for, in this Cr.M.P., be allowed.

7. Learned Addl.P.P. appearing for the State and the learned counsel for the opposite party No.2 on the other hand oppose the prayer of the petitioners made in this Cr.M.P. and submit that there is direct allegation against the petitioners of committing theft of valuable articles worth Rs.7-8 lakhs. Hence, it is submitted that the offence punishable under Section 380 of the Indian Penal Code is made out against the petitioners. It is lastly submitted that this Cr.M.P., being without any merit, be dismissed.

8. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that in order to constitute the offence punishable under Section 380 of the Indian Penal Code, the essential ingredients are:-

- (a) The accused removed movable property;
- (b) He removed the property out of the possession of another person without his consent;
- (c) He did so with a dishonest intention;
- (d) The property was removed from the building, tent or vessel used as a human dwelling or for the custody of the property.

9. Now, coming to the facts of the case, it is the admitted case of even the complainant that the petitioner No.1 was in possession of the property after delivery of possession was given to him on 17.11.2019. So, on 21.11.2019 or 22.11.2019, it cannot be said that the petitioner No.1 removed any property out of the possession of another because admittedly the petitioner No.1 was in possession of the property. So, in the absence of this essential ingredient to constitute the offence punishable under section 380 of the Indian Penal Code; even if the entire allegations made in the complaint, statement on solemn affirmation and the statement of the enquiry witnesses are considered to be true in their entirety still the offence punishable under Section 380 of the Indian Penal Code is not made out against the petitioners.

10. So far as the offence punishable under Section 453 and 454 of the Indian Penal Code are concerned, the essential ingredient is that there has to be a criminal trespass or house-breaking. The offence of criminal trespass is made out only when a person enters into or upon the property in possession of another.

11. Now, coming to the facts of the case, admittedly consequent upon delivery of possession of the place of occurrence, to the petitioner No.1 by the due process of law on 17.11.2019, the petitioner No.1 was in possession of the place of occurrence (property in question). Hence, it cannot be said that he has committed criminal trespass to a place; of which he was in lawful possession.

12. So far as the house-breaking is concerned, Section 445 of the Indian Penal Code defines house-breaking. House-breaking is an aggravated form of house-trespass. Section 442 of the Indian Penal Code defines house-trespass and to commit house-trespass a person has to commit criminal trespass by entering into or remaining in any building, tent or vessel etc. But as already mentioned above; since no criminal-trespass can be said to have been committed by the petitioners, so, obviously they cannot be said to have committed house-trespass and in the absence of any house-trespass certainly a house-breaking cannot be said to have been committed by the petitioners.

13. In view of the discussions made above, this Court is of the considered view that even if the allegations made against the petitioners are considered to be true, the same is insufficient to constitute the offence of criminal trespass or house-breaking and in the absence of the same neither the offence punishable 453 of the Indian Penal Code nor the offence punishable under Section 454 of the Indian Penal Code is made out against the petitioners.

14. So far as the offence punishable under Section 420 of the Indian Penal Code is concerned, the essential ingredient to constitute the offence punishable under Section 420 of the Indian Penal Code is that the accused must cheat and thereby dishonestly induce someone to part with any property.

15. Now, as already indicated above, the petitioner No.1 has been put in possession of the property by the due process of law in execution of a decree passed by a Civil Court. So, it cannot be said that the complainant or for that matter anyone else, has parted with any property. In the absence of this essential ingredient even if the entire allegations made against the petitioners are considered to be true still the offence punishable under Section 420 of the Indian Penal Code is not made out against the petitioners.

16. In view of the discussions made above, this Court is of the considered view that continuation of this criminal proceeding against the petitioners will amount to abuse of process of law and this is a fit case where the entire criminal proceeding arising out of C.P. Case No.3656 of 2019 including the order dated 15.09.2022 passed by learned Judicial Magistrate-1st Class, Dhanbad as prayed for by the petitioners, be quashed and set aside.

17. Accordingly, the entire criminal proceeding arising out of C.P. Case No.3656 of 2019 including the order dated 15.09.2022 passed by learned Judicial Magistrate-1st Class, Dhanbad as prayed for by the petitioners, is quashed and set aside qua the petitioners named above.

18. In the result, this Cr.M.P., stands allowed.

19. In view of disposal of the instant Cr.M.P., the interim relief granted vide order dated 20.11.2022, stands vacated.