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**(2013) 04 JH CK 0006**  
**In the Jharkhand High Court**  
**Case No : Criminal M.P. No. 465 of 2013**

Shital Oraon and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

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**Date of Decision :** 18-04-2013

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 323, 34, 341, 353, 452

**Citation :** (2013) 3 JLJR 689

**Hon'ble Judges :** Rakesh Ranjan Prasad, J

**Bench :** Single Bench

**Advocate :** Mukesh Kr. Sinha, for the Appellant; Dilip Kr. Prasad for the Opp.  
Party No. 2, for the Respondent

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## Judgement

Rakesh Ranjan Prasad, J.—Heard learned counsel appearing for the petitioners, learned counsel for the State and the learned counsel appearing for O.P. No. 2. Order dated 8.2.2013 passed in C.P. Case No. 547 of 2008 under which cognizance of the offence was taken for the offences punishable under Sections 341 and 323 of the Indian Penal Code against the petitioners is under challenge.

2. Mr. Mukesh Kr. Sinha, learned counsel appearing for the petitioners submits that it so happened that on 18.3.2008 Grijesh Kumar, who happens to be the informant of the case, giving rise to this application, came to the confidential section of petitioner No. 1 who at the relevant point of time was posted as S.P., Dhanbad. He by displaying service revolver, started abusing the petitioner and thereby he disturbed the functioning of the office. In such situation one F.I.R. was lodged by one Munna Kumar Singh, one of the staffs of the residential office of petitioner No. 1 on 22.3.2008, which was registered under Sections 452, 353, 504 and 34 of the Indian Penal Code. After two days i.e. on 24.3.2008, Grijesh Kumar filed a complaint petition, alleging therein, that he had given Rs. 5 lacs to S.P., Dhanbad through one Samod Prasad Sinha for being posted as Officer Incharge at Maithon Police Station, but when posting was not made, he reminded Samod Prasad Sinha, who always assured that something would be done within a

few days. When nothing was done, the complainant alongwith Samod Prasad Sinha came to the residence of S.P on 18.3.2008 who was called inside the office, where on amongst others, petitioner No. 1 was also present there. It was said by petitioner No. 1 that a sum of Rs. 2 lacs would be returned to him, upon which the complainant and also Samod Prasad Sinha made a request to return Rs. 3 lacs more. As soon as they demanded Rs. 3 lacs more they were assaulted and even this Grijesh Kumar was made to write something over piece of paper. On such allegation a complaint case was filed on filing such complaint petition, solemn affirmation of the complainant was recorded, wherein, according to learned counsel appearing for the petitioners, altogether a different story was given wherein it was stated that the money had been given, as three departmental proceedings were pending, so that the complainant may be exonerated from the charges in all three departmental proceedings. The complainant never accepts about giving of money for being posted at a particular police station and this contradictory statement made by the complainant on solemn affirmation was enough for the learned court below to dismiss the complaint petition. However, the learned court below returned the complaint to the complainant keeping in view that allegation made therein pertains to offence under Prevention of Corruption Act cognizance of which can be taken only by special court designated under the provision of Prevention of Corruption Act. Instead of filing the complaint in a competent court the complainant preferred a criminal revision before the Sessions Judge which was disposed of vide order dated 7.4.2010 directing the court below to pass a fresh order in accordance with law. Again the complainant was advised to file a case before the competent Court. The complainant again preferred a revision application which was disposed of directing the Chief Judicial Magistrate to pass an order in accordance with law and only thereafter, order was passed taking cognizance of the offence under Sections 341 and 323 of the Indian Penal Code. It is further submitted that since it was the complainant who entered into the Confidential Section of the office of the petitioner No. 1 and, as such no offence is made out u/s 341 of the Indian Penal Code. Similarly keeping in view the fact that a case has already been lodged against the complainant, any subsequent case lodged against the petitioners can be said to be tainted with malice and, therefore, court should not have taken cognizance of the offence and, thereby the Court by taking cognizance of the offences as aforesaid, has committed illegality.

3. As against this, learned counsel appearing for the opposite party No. 2 submits that there has been reasons for filing a complaint on 24.3.2008 as before lodging the present complaint, the informant had earlier made a complaint before higher authority but when no action was taken no option was left with the Opposite Party but to file a complaint petition before the Court wherein it has been alleged by the complainant that he as well as one Samod Prasad Sinha had been asked to come at the residential office of petitioner No. 1 on telephone and only on his direction, complainant had come alongwith Samod Prasad Sinha to the office of the S.P. where the petitioners and other persons

wrongly restrained him and even subjected him to assault and, thereby, the Court is absolutely right in taking cognizance of the offence. Having heard counsel for the parties, it does appear that two versions are there, one of the petitioner, which is there in the first information report lodged on 22.3.2008 and another of the complainant, which is there in the complaint petition. Therefore, it would not be proper for this Court at this stage to go for ascertaining the veracity of the allegation rather it can only be ascertained, during the trial. In such situation order taking cognizance never warrants to be quashed and hence this application is disposed of.