

**(2013) 02 JH CK 0014**

**In the Jharkhand High Court**

**Case No : Criminal M.P. No. 536 of 2012**

Umang Kejriwal and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

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**Date of Decision : 13-02-2013**

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Criminal Procedure Code, 1973 (CrPC) — Section 482  
Penal Code, 1860 (IPC) — Section 323, 34, 506

**Citation : (2013) 2 AJR 15**

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

**Bench : Single Bench**

**Advocate : Indrajeet Sinha, for the Appellant;**

**Final Decision : Allowed**

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## **Judgement**

Rakesh Ranjan Prasad, J.—Heard the learned counsel appearing for the petitioners and the learned counsel for the State. This application has been filed for quashing of the entire criminal proceedings of Complaint Case No. 1866 of 2011, including the order dated 25.1.2012, whereby and whereunder cognizance of the offences punishable under Sections 323, 506 /34 of the Indian Penal Code has been taken against the petitioners.

2. Before advertng to the submissions advanced on behalf of the petitioners, the case of the complainant needs to be taken notice of.

3. It is the case of the complainant that the complainant runs a consultancy company in the name of Hexagon Software Consultancy Private Limited, who has engaged itself in providing skilled and non-skilled men force to different companies as per their requirements. When the Electrosteel Steels Limited, to which these petitioners are the Directors and General Managers, requested the complainant to provide helpers, masons, carpenters, supervisors etc., they were provided with but in spite of taking services from them, the accused persons/ petitioners stop making payment to the complainant and, thereby, they put the

complainant company to loss to the extent of Rs. 70 lakhs. Further case of the complainant is that on 7th November, 2011, 4-5 unknown persons came to his office and started abusing the complainant in filthy language and started beating him by saying that he should forget about his claim of Rs. 70 lakhs and they also warned him not to move to the Court of law. On such allegation, cognizance of the offences as aforesaid, was taken against these petitioners, which has been challenged to be bad.

4. Mr. Sinha, learned counsel appearing for the petitioners submits that from the allegation made in the complaint, it would be apparent that these petitioners have never participated in the alleged occurrence said to have taken place on 7th November, 2011. Still the Court has taken cognizance of the offences. Learned counsel further submits that the order taking cognizance is bad for other reasons also. In this regard, it was submitted that the instant prosecution is the outcome of the malicious prosecution as earlier to lodgment of the case, the agreement, arrived at in between the parties, had to be terminated by the petitioners company on 3.10.2011, when the complainant, in spite of being requested time without numbers to fulfill the obligations, attached with various statutes, did not pay any heed to the request made by the petitioners.

5. As against this, the learned counsel for the State submits that though the petitioners have not been alleged directly for committing offence on 7th November, 2011, but they, as per the allegation, seem to have abetted those persons to commit the offence and, thereby, order taking cognizance never warrants to be quashed.

6. It is not that only on the ground that there has been no direct involvement of these petitioners, the order taking cognizance is being sought to be quashed, rather entire criminal proceeding is being sought to be quashed also on the ground that the instant prosecution is the outcome of the malicious prosecution.

7. It be recorded that the Hon"ble Supreme Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, , has been pleased to lay down the categories of the cases by way of illustrations wherein extraordinary power under Article 226 of the Constitution of India or the inherent power u/s 482 of the Code of Criminal Procedure can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure ends of justice. One of such categories is as follows:--

Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

8. As has been noticed above that both the parties had entered into an agreement where-under the complainant was supposed to supply the skilled and non-skilled persons as per the requirement. It is the case of the complainant that the workers were supplied from whom work was taken but the payment was not

made. However, it is the case of the petitioners that on account of non-observance of the obligations as has been fixed under the different statutes the agreement was terminated and that is the reason for carrying personal grudge against these petitioners. In such situation, one can easily come to conclusion that the complaint case has been lodged maliciously with an ulterior motive for wreaking vengeance. In this situation, if the complaint case is allowed to be proceeded with, it would amount to abuse of the process of the Court.

9. Accordingly, the entire criminal proceeding of Complaint Case No. 1866 of 2011, including the order taking cognizance dated 25.1.2012, is hereby quashed. In the result, this application is allowed.