

(2022) 07 JH CK 0002

Jharkhand High Court

Case No: Criminal Miscellaneous Petition No. 979 Of 2017

Vikash Singh

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision: July 5, 2022

Acts Referred:

- Indian Penal Code, 1860 - Section 323, 341, 342, 504

Hon'ble Judges: Sanjay Kumar Dwivedi, J

Bench: Single Bench

Advocate: P.S. Dayal, Sanjay Kumar, Niki Sinha, Pradeep Kumar Deomani

Final Decision: Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. P.S. Dayal assisted by Mr. Sanjay Kumar, learned counsel for the petitioner, Mrs. Niki Sinha, learned counsel for the State and Mr.

Pradeep Kumar Deomani, learned counsel for opposite party no.2.

2. This petition has been filed for quashing the entire criminal proceeding of Garu P.S. Case No.09/2016 (G.R. No.396/2016) including the order taking

cognizance dated 04.01.2017 by which cognizance under Sections 341, 342, 323, 504 of the Indian Penal Code has been taken against the petitioner,

pending in the court of the learned Judicial Magistrate, 1st Class, Latehar.

3. The opposite party no.2 filed the FIR alleging therein that on 18.04.2014 the informant went in Sarju C 214 Battalion. On 19.04.2016, he reached

Chauparnala at morning. Check Roll Cell was made on 20.04.2016 at morning time. Company attendant said him that O.C. Vikash Kumar (petitioner)

called him. The informant went there and found that O.C. was crying on one constable and O.C. took liquor. The informant said, he came, then O.C.

became angry and abused him and gave some direction. On 21.04.2016, O.C. took liquor and at evening stand two was done and thereafter arms

were deposited. The informant handed over his arms to Pilla Ram who is Company Adjutant. It was further alleged that O.C. again abused the

informant and on objection he was assaulted with fight. O.C. Vikash Kumar caught his neck and assaulted on his shoulder by leg and he ordered

others to assault the informant. Then Radhey Shyam, Inspector, S.I. Ram Kumar, A.S.I. Dilla Ram, Hawaldar Sattar Mohammad, Constable Niraj

Kumar and Constable Gurmeet Kumar and others (about fifteen persons) assaulted the informant. It was also alleged that the informant's hand and

leg was tied by rope and he was badly assaulted.

4. Mr. Dayal, learned counsel appearing for the petitioner submits that occurrence took place on 20.04.2016 and 21.04.2016, but no information was

given by the informant. He further submits that even the information was not given to the head of his Battalion and after lapse of two months on

03.06.2016, the informant gave written application to the Superintendent of Police, Latehar and the FIR was lodged on 09.06.2016. He further submits

that the petitioner is the Assistant Commandant and head of the Battalion and the informant is Constable. He also submits that in the said Battalion,

during duty hours the informant disobeyed the direction of the O.C. and misbehaved and threatened him and for that departmental proceeding was

initiated against the informant and subsequently in the enquiry, charge has been proved and opposite party no.2 has been dismissed from service. He

further submits that warning letter was also issued against the petitioner on 21.04.2016 and the disciplinary authority has given direction to initiate

departmental proceeding against the opposite party no.2 vide order dated 03.05.2016 and thereafter the FIR has been lodged on 09.06.2016. He also

submits that the case is malicious in nature and summon has been issued by the learned court below without application of mind. He further submits

that FIR has been lodged against other nine accused persons and eleven unknown persons, however charge-sheet has been submitted against this

petitioner only.

5. Per contra, Mr. Deomani, learned counsel for opposite party no.2 submits that the opposite party no.2 was badly assaulted by the petitioner and others. He further submits that opposite party no.2 was treated in RIMS as well as Composite Hospital of CRPF, Ranchi. He refers to the prescriptions of the Doctor, which have been brought on record by way of filing counter affidavit.

6. In view of the above facts and looking to the submissions of the learned counsel for the parties, it appears that warning letter was issued to opposite party no.2 on 21.04.2016 and the disciplinary authority has given direction to initiate departmental proceeding against opposite party no.2 vide order dated 03.05.2016 and thereafter the FIR has been lodged by opposite party no.2 on 09.06.2016. Looking to the cognizance order, it transpires that prima facie material against the petitioner is not disclosed in the impugned order, which was required to be disclosed in view of the fact that out of other nine named accused and eleven unknown persons, FIR has been lodged, however only against this petitioner, charge-sheet has been submitted and in view of that, prima facie materials are required to be disclosed in the cognizance order, which is lacking in the case in hand. It is well settled that in the cognizance order, detailed order is not required, but what is the prima facie evidence available on record, is required to be disclosed in the cognizance order particularly in a situation where charge-sheet has been submitted against one accused (petitioner) only, however FIR has been lodged against other nine named accused and eleven unknown persons.

7. In view of the aforesaid facts, the order taking cognizance dated 04.01.2017 passed by the learned S.D.J.M., Latehar in connection with Garu P.S.

Case No.09/2016 (G.R. No.396/2016), pending in the court of the learned Judicial Magistrate, 1st Class, Latehar is, hereby, set aside. The matter is remitted back to the concerned court to proceed afresh, in accordance with law.

8. Accordingly, this petition stands disposed of.

9. Interim order dated 02.08.2017/24.04.2019 stands vacated.