
Om Prakash Agarwal Vs State Of Jharkhand And Others

Criminal Miscellaneous Petition No. 1786 Of 2019

Court: Jharkhand High Court

Date of Decision: Nov. 2, 2022

Acts Referred:

Indian Penal Code, 1860 " Section 323, 504#Negotiable Instruments Act, 1881 " Section 138#Code Of Criminal Procedure, 1973 " Section 482

Hon'ble Judges: Sanjay Kumar Dwivedi, J

Bench: Single Bench

Advocate: Nitin Kumar Pasari, Sidhi Jalan, Naveen Toppo, Shubham Choudhary, Gaurav Kaushalesh, Rituraj Sajalta, Sardhu Mahto, Sumeet Gadodia

Final Decision: Allowed/Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

Heard Mr. Nitin Kumar Pasari, the learned counsel appearing for the petitioner, Mr. Sumeet Gadodia, the learned counsel appearing for the O.P.No.2

and Mr. Sardhu Mahto, the learned A.P.P appearing for the respondent State.

This petition has been filed for quashing of the entire criminal proceeding including the order taking cognizance dated 14.05.2019 passed by the learned

Chief Judicial Magistrate, Ranchi in connection with Complaint Case No.3775 of 2017 whereby cognizance under section 323 and 504 of the I.P.C

has been taken against the petitioner and pending in that learned court.

The complaint case has been lodged alleging therein that the O.P.No.2 develops the land as multi-storied building and works as contractor/developer

under a firm named and style as M/s Kalpataru Electricals & Allied Products Pvt. Ltd having its registered office at K-54 IVth floor, Kalpataru Jalan

Road, Upper Bazar, P.S. Kotwali, District Ranchi and incorporated under the Companies Act. In the order to develop the land the complainant

proposed to develop a residential cum commercial complex named Krishna Kripa at Dhanbad site and after the opening the site petitioner entered into

an agreement with the O.P.No.2 for a purchase of flat being no.as 703 on the seventh floor of the proposed building for 2136 sq.ft. in block A. That

after the aforesaid agreement the petitioner influence to the O.P.No.2 by various angles and assures that he will look after the project and being

influenced of the petitioner the o.p.No.2 handed over all assets of the site including key of the office and other valuable commodities. That after the

charge the petitioner fully fledged looking the issues of proposed site but surprisingly he by forcibly taken signed cheque book of accused of Bank of

India as security purpose Upper Bazar Ranchi being as nos.000513, 000514, 000515, 000516, 000517, 000518, 000519, 000520, 000521 which was in a

series and part of cheque book when the O.P.no.2 noticed the matter that his nine cheques were missing forcibly taken by the petitioner then he stop

the payment by his bankers and informed the matter to the concerned local P.S. That with utter surprises O.P.No2 was shocked that all nine cheque

were deposited by the petitioner in his account and after dishonour he filed a case u/s 138 of the N.I. Act. That from very beginning all the accused

persons and petitioner collectively humiliated the O.P.no.2 by various angles for illegal gain and demanded a flat and handsome amount as ransom and

threatened as tum Dhanbad aaoge to goli marba denge. That on dated 01.11.2017a t about 5 p.m. when O.P.No.2 was sitting in his office at K-54

Kalpataru Jalan Road, PS Kotwali all the accused collectively entered into the office of the O.P.No.2 and hurled the collar of the O.P.No.2 and

started beaten by hands and fists and snatched Rs.50,000/- from galla/drawer of the O.P.No.2 and threatened to put in fear of death and demanded

flat of Dhanbad site as Ransom and advised to not to go at Dhanbad site otherwise he will be ruined at the time of incidence both the witnesses were

present at the site of occurrence.

Mr. Pasari, the learned counsel appearing on behalf of the petitioner submits that the petitioner was aged about 72 years on the date of alleged

occurrence and is a permanent resident of Dhanbad district and is leading his retired life since 2007. He further submits that the petitioner is having

several ailments including depression and the petitioner has got operated for heart ailment in the month of June, 2017 at Asian Dwarkadas Jalan

Hospital, Dhanbad. He further submits that the O.P.No.2 is Director of the company namely M/s Kalpataru Electricals & Allied Products Pvt. Ltd.

He further submits that O.P.No.2 is having criminal antecedents in relation to various cases undergoing at different places within the State of

Jharkhand under section 138 of the Negotiable Instruments Act, 1881. The O.P.No.2 had proposed for the sale of flat, through M/s Kalpataru

Electricals & Allied Products Pvt. Ltd to the petitioner and had entered into an agreement for sale of flat vide agreement dated 13.12.2009 for total

consideration of Rs.23,94,000/-which was paid at the time of agreement, however, the said property was not handed over to the petitioner within 36

months as per the agreement. The O.P.No.2 started negotiation with the petitioner and concluded the dispute with settlement dated 25.09.2014

wherein the O.P.No.2 had agreed to pay a sum of Rs.45 lakhs to the petitioner against the property mentioned in the agreement. The O.P.No.2

pursued the petitioner to receive the cheque against the settlement amount of Rs.45 lakhs and issued nine cheques of Rs.5 lakhs each and the said

cheques were presented before the Bank which was dishonoured and pursuant to that notice under the Negotiable Instruments Act has been issued

against the O.P.No.2 and the same was replied and pursuant thereto the complaint case has been filed for bouncing of cheque against the O.P.No.2.

He further submits that after receiving the notice in the said complaint case the present complaint has been filed against the petitioner maliciously and

it is a counter blast of the case filed under section 138 of the Negotiable Instrument Act. He further submits that in the complaint case, the petitioner

his son, wife and daughter have been made accused however the learned court has taken cognizance against the petitioner who happened to be of 72

years of age. He further submits that it is unbelievable that an old person would come to Ranchi from Dhanbad and would assault the petitioner and

snatched a sum of Rs.50,000/-. By way of referring to the reply of notice by the O.P.No.2 which was meant for under section 138 of Negotiable

Instruments Act. He submits that in S.A the O.P.No.2 has admitted that cheque in question was issued for security purpose, however, in the

complaint it has been alleged that forcible the cheque has been obtained by the petitioner which is contradictory. On these grounds, he submits that the

case is maliciously lodged against the petitioner and this Court may rescue the petitioner under section 482 Cr.P.C.

On the other hand, Mr. Gadodia, the learned counsel appearing on behalf of the O.P.No.2 submits that the case has been lodged under several

sections of the I.P.C however, the learned court has taken cognizance only under section 323 and 504 of the I.P.C which suggest that the learned

court after applying his judicial mind has taken cognizance. He further submits that the learned court has looked into the solemn affirmation of the

complainant as well as three enquiry witnesses who have supported the case of the petitioner with regard to the assault and snatching a sum of

Rs.50,000/-. He submits that there is no illegality in the impugned order.

The learned counsel appearing for the respondent State submits that looking into the enquiry witnesses and solemn affirmation the learned court has

taken cognizance and there is no illegality in the impugned order.

In view of the above submission of the learned counsels appearing for the parties, the Court has perused the materials on record and finds that the

complaint case has been lodged against five persons however, the learned court has taken cognizance against the petitioner only and the other

accused were son, wife, grand child and daughter of this petitioner. It is an admitted fact that for bouncing of nine cheques the petitioner has initiated

the complaint case under section 138 of the Negotiable Instruments Act against the O.P.No.2. Looking into the reply to the notice issued by the

petitioner it is crystal clear that the cheques in question were issued by the O.P.No.2 however, it has been alleged that it was for the security purpose

and that is subject matter of trial which is already going on. Admittedly, the agreement was entered into for purchase of flat in question which was not

handed over to the petitioner within 36 months in terms of the agreement. The petitioner sought to return of the amount. The agreement was entered

between the petitioner and the O.P.No.2 for returning of sum of Rs.45 lakhs and the O.P.No.2 issued nine cheques of Rs.5 lakhs each which have

been bounced. It has been alleged that the petitioner and others who are family members of this petitioner have travelled from Dhanbad to Ranchi and

assaulted the petitioner and took away a sum of Rs.50,000/-. It is very strange that the case like this, the entire family members of this petitioner has

been made accused in the complaint however, the learned court has taken cognizance against the petitioner only who is aged about 72 years and it is

unbelievable that a person of 72 years of age would come from Dhanbad to Ranchi and assault the O.P.No.2 and took away a sum of Rs.50,000/-.

The learned court has taken cognizance by the impugned order dated 14.05.2019 which also is not in accordance with law. What are the prima facie

materials against the petitioner has not been disclosed in the said cognizance order. Not taking cognizance against the other four persons itself suggest

that the case is maliciously filed against the petitioner as the O.P.No.2 is facing trial under section 138 of Negotiable Instruments Act. Thus, the facts

of this case suggest that it is a case of counter blast and proceeding was initiated under section 138 of Negotiable Instruments Act against the

O.P.No.2.

It is well settled that whether proceeding with the trial would result in an abuse of the process of the Court and would not serve the ends of justice, the

High Court can exercise its power under Section 482 Cr.P.C. Reference may be made to the case of Rajiv Thapar & Ors. Versus Madan Lal

Kapoor, reported in (2013) 3 SCC 330, wherein the Hon'ble Supreme Court in paras 30 to 30.5 held as follows:-

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

prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

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 levelled 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, judicial conscience of the High Court should persuade it to quash such criminal

proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. 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.Ã¢â¬â¢

It is admitted fact that two cases are being faced by this O.P.No.2.

In view of the above facts, the reasons and the analysis, the entire criminal proceeding including the order taking cognizance dated 14.05.2019 passed

by the learned Chief Judicial Magistrate, Ranchi in connection with Complaint Case No.3775 of 2017 pending in that learned court is quashed.

Cr.M.P.No.1786 of 2019 stands allowed and disposed of.

Pending petition, if any, also stands disposed of.

Interim order, if any, stands vacated.