

(2024) 12 JH CK 0054

Jharkhand High Court

Case No: Cr.M.P. No.1608 Of 2018

Shashi Bhushan Kumar

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Dec. 16, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 482
- Indian Penal Code, 1860 - Section 379, 419, 420, 465

Hon'ble Judges: Anil Kumar Choudhary, J

Bench: Single Bench

Advocate: Shailesh Kr. Singh, Satish Kumar, Lukesh Kumar

Final Decision: Dismissed

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 Dhanbad P.S. Case No.608 of 2017 corresponding to G.R. Case No.5008

of 2017 in which cognizance has been taken by the learned CJM, Dhanbad involving the offences punishable under Section 379, 419, 420 & 465 of

Indian Penal Code against the petitioner consequent upon submission of the charge sheet against him and as the learned CJM, Dhanbad found the

offences punishable under the said sections is made out against the petitioner.

3. The learned counsel for the petitioner submits that the allegations against the petitioner are false. Though, the opposite party no.2 instituted two

other cases, after trial, the petitioner has been acquitted in both the cases. It is next submitted that the opposite party no.2 took loan amounting to

Rs.6,00,000/- for solemnizing her marriage by handing over cheques in lieu of such loan and when the said cheques were dishonored, the petitioner

filed complaint case in the Court of JMFC, Singrauli, Madhya Pradesh and for wrecking vengeance, this case has been instituted, hence, it is submitted

that the prayer, as prayed for in the instant Cr.M.P, be allowed.

4. Learned Addl.P.P. appearing for the State and the learned counsel for the opposite party No.2 on the other hand vehemently oppose the prayer of

the petitioner made in the instant Cr.M.P and submit that the undisputed facts is that the allegations made by the petitioner against the

informant/opposite party no.2 was found to be true by the police during the investigation of the case, hence, there is no justifiable reason to quash the

entire criminal proceeding at this nascent stage. Therefore, it is submitted that this Cr.M.P., being without any merit, be dismissed.

5. 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 it is a settled principle of law that no mini trial can be conducted by the high court in exercise of its power under Section 482 of Cr.P.C as

has been reiterated in the case of State of Uttar Pradesh & Anr. vs. Akhil Sharda & Ors. reported in 2022 LiveLaw SC 594, the relevant portion of

which reads as under:-

“Having gone through the impugned judgment and order passed by the High court has set aside the criminal proceedings in exercise of powers under Section

482 CrPC, it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application

under Section 482CrPC. As observed and held by this court in a catena of decisions, no mini trial can be conducted by the High Court in exercise of power under

Section 482CrPC, jurisdiction and at the stage of deciding the application under Section 482CrPC, the High Court cannot get into appreciation of evidence of

the particular case being considering. (Emphasis supplied)

6. It is also a settled principle of law that in exercise of its power under Section 482 of CrPC, the genuine prosecution cannot be stifled with as has

been held in the case of Monica Kumar (Dr.) and Another vs. State of Uttar Pradesh and others reported in (2008) 8 SCC 781.

7. The allegation against the petitioner is that the petitioner has inter alia committed theft of a cheque book containing three cheque slips which were signed by the informant and after investigation of the case by the police, the same was found to be true. Therefore police submitted charge sheet and on the basis of the same, the learned Magistrate has taken cognizance. There is also allegation against the petitioner of committing forgery and cheating which offences were also found to be true by the police after investigation of the case and cognizance in respect of those offences has also been taken.

8. A case has been instituted by the petitioner against the informant involving the offence punishable under Section 138 N.I. Act is sub-judice. No finding in respect of such contention of the petitioner can be given by this Court in exercise of its power under Section 482 of Cr.P.C. The fact that the petitioner was acquitted in two other cases instituted by the informant does not mean that those cases were false; because acquittal can result on the basis of so many factors and unless the court expressly holds as such, it cannot be said that merely because an accused was acquitted in a case, the same amounts to instituting a false case.

9. Under such circumstances, this Court is of the considered view that there is no merit in this Cr.M.P.

10. Accordingly, this Cr.M.P., being without any merit, is dismissed.