
(2025) 10 JH CK 0041

Jharkhand HC

Case No: Criminal Miscellaneous Petition No.859 of 2025

Prakash Paswan @ Jai
Prakash Paswan

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Oct. 14, 2025

Acts Referred:

- Bhartiya Nagrik Suraksha Sanhita, 2023 — Section 528
- Code of Criminal Procedure, 1973 — Section 216, 218, 228
- Indian Penal Code, 1860 — Section 34, 307, 323, 325, 341, 504

Hon'ble Judges: Anil Kumar Choudhary, J

Bench: Single Bench

Advocate: Pratik Sen, Prabhu Dayal Agrawal, Kamdeo Pandey, Sanjay Prasad

Final Decision: Allowed

Judgement

Anil Kumar Choudhary, J

I.A. No.12779 of 2025

Heard the parties.

Learned counsel for the petitioners submits that this interlocutory application has been filed for early hearing of this Criminal Miscellaneous Petition.

Since, the hearing of this Criminal Miscellaneous Petition is taken up today, hence, this interlocutory application stands disposed of being infructuous.

Cr.M.P. No.859 of 2025

This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023 with the prayer to quash the order

dated 07.02.2025 passed by the learned Sessions Judge, Giridih in Criminal Revision No.146 of 2022 in connection with G.R. No.1281 of 2020 arising out of Bagodar P.S. Case No.91 of 2020 whereby and where under the learned Sessions Judge, Giridih allowed the criminal revision and remanded the case to the court of learned Judicial Magistrate-1st Class, Giridih with a direction to pass a fresh order in accordance with law after observing that there is sufficient material available in the record to attract Section 307 of the Indian Penal Code along with other Sections for which charge-sheet has been submitted by the police after investigation of the case.

2. The brief fact of the case is that the petitioners are accused persons of Bagodar P.S. Case No.91 of 2020 in which after investigation of the case, police submitted charge-sheet mentioning that the offences punishable under Section 341, 323, 325, 504, 34 of the Indian Penal Code are made out against the petitioners and on the basis of the same, the learned Judicial Magistrate-1st

3. Being aggrieved by the same, the informant of the said Bagodar P.S. Case No.91 of 2020 corresponding to G.R. No.1281 of 2020, preferred Criminal Revision No.146 of 2022. The learned Sessions Judge, Giridih without giving any opportunity of being heard to the petitioners, though they were parties to the said Criminal Revision No.146 of 2022, allowed the Criminal Revision behind them.

4. Being aggrieved by the same, the petitioners filed Criminal Miscellaneous Petition No.1962 of 2023 before this Court and this Court vide order dated 29th July, 2024 in the said Criminal Miscellaneous Petition No.1962 of 2023, set aside the order dated 27.03.2024 passed by the learned Additional Sessions Judge-I, Giridih passed in Cr. Revision No.146 of 2022 and remitted the matter to the court of learned Sessions Judge, Giridih to pass a fresh order in accordance with law after giving an opportunity of being heard to the petitioners by issuing a notice to them. Vide order dated 07.02.2025, the learned Sessions Judge, Giridih allowed the Criminal Revision after observing that the materials available in the record prima facie go to show that the injuries sustained by the victim could be dangerous to life or becoming sufficient in ordinary cause of nature, to cause death of the injured, in case medical aid was not rendered and was of the opinion that there is sufficient material available in the record to attract Section 307 of the Indian Penal Code along with other Sections and remitted the matter back to the learned trial court.

5. Learned counsel for the petitioners relies upon the judgment of the Hon^{ble} Supreme Court of India in the case of State of Gujarat vs. Girish Radhakrishnan Varde reported in (2014) 3 SCC 659 paragraph-15 of which reads as under:-

¶15. The question, therefore, emerges as to whether the complainant/informant/prosecution would be precluded from seeking a remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the prosecution cannot be allowed to suffer prejudice by ignoring exclusion of the sections which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offences into the charge-sheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this lacunae can be allowed to be filled in by the Magistrate before whom the matter comes up for taking cognizance after submission of the charge-sheet and as already stated, the Magistrate in a case

which is based on a police report cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge under Sections 216, 218 or under Section 228 CrPC as the case may be which means that after submission of the charge-sheet it will be open for the prosecution to contend before the appropriate trial court at the stage of framing of charge to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. Simultaneously, the accused also has the liberty at this stage to submit whether the charge under a particular provision should be framed or not and this is the appropriate forum in a case based on police report to determine whether the charge can be framed and a particular section can be added or removed depending upon the material collected during investigation as also the facts disclosed in the FIR and the chargesheet. (Emphasis supplied)

6. Therefore, it is submitted that the prayer, as prayed for in the instant Cr.M.P., be allowed.

7. Learned Spl.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 petitioners made in the instant Cr.M.P. and submit that there is no illegality in the order dated 07.02.2025 passed by the learned Sessions Judge, Giridih in connection with Criminal Revision No.146 of 2022 in connection with G.R. No.1281 of 2020 arising out of Bagodar P.S. Case No.91 of 2020. Hence, it is submitted that this Cr.M.P., being without any merit, be dismissed.

8. 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 as has been held by the Hon^{ble} Supreme Court of India in the case of State of Gujarat vs. Girish Radhakrishnan Varde (supra), it is a settled principle of law that the Magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking cognizance. Under such circumstances, the learned Judicial Magistrate-1st Class, Giridih having taken cognizance of exactly the offences in respect of which charge-sheet has been submitted, there was no rhyme or reason for the learned Sessions Judge, Giridih to interfere with the same in exercise of its revisional power and by the impugned order dated 07.02.2025 in Criminal Revision No.146 of 2022, in connection with G.R. No.1281 of 2020 arising out of Bagodar P.S. Case No.91 of 2020, the learned Sessions Judge, Giridih has committed a grave illegality. Therefore, the impugned judgement is not sustainable in law and is liable to be quashed and set aside.

9. Accordingly, the order dated 07.02.2025 passed by the learned Sessions Judge, Giridih in Criminal Revision No.146 of 2022 in connection with G.R. No.1281 of 2020 arising out of Bagodar P.S. Case No.91 of 2020, is quashed and set aside and the order dated 12.10.2020 passed by the learned Judicial Magistrate-1st Class, Giridih in connection with Bagodar P.S. Case No.91 of 2020 is restored.

10. In the result, this Cr.M.P. stands allowed.