

**(2004) 05 JH CK 0002**

**Jharkhand High Court**

**Case No:** Criminal M.P. No. 880 of 2002

Smt. Archana Mehta

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

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**Date of Decision:** May 14, 2004

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 307, 323
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3, 4

**Citation:** (2004) 3 Crimes 260 : (2004) 2 JCR 574

**Hon'ble Judges:** Hari Shankar Prasad, J

**Bench:** Single Bench

**Advocate:** A.K. Das, for the Appellant; App and M.J. Khan, for the O.P. No. 2, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Hari Shankar Prasad, J.

This application u/s 482 of the Code of Criminal Procedure has been filed for quashing the entire criminal proceeding initiated under Complaint Case No. C/1 117 of 2002 including the order dated 2.8.2002 whereby the learned Chief Judicial Magistrate, Palamau has taken cognizance.

2. Facts giving rise to the filing of this application are that O.P. No. 2 (hereinafter to be referred as Complainant) filed a complaint case stating therein that he is a chamar by caste and is the District President of Bahujan Samaj Party. He had made a representation in respect of the illegal deeds of the petitioner and had brought to the light of the misdeeds and illegal acts of the petitioner and when inspite of such

representation, there was no improvement in the petitioner and embezzlement in respect of Indira Awaas Yozna continued, he along with general public started demonstration in front of the office of the petitioner and the petitioner called three of them including the complainant in her office and on reaching there, complainant found the officer-in-charge and other police officials already present there who caught hold of them and abused them with filthy language and also assaulted them. Further, he was called by his caste and thereafter he along with others were sent to Jail. An inquiry u/s 202, Cr PC was held and learned Court below was pleased to take cognizance vide order dated 8.2.2002 in the said complaint case u/s 323, IPC and 3 and 4 of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act.

3. Learned counsel appearing for the petitioner submitted that even if the allegations are taken to be true, no case is made out against the petitioner. It was further pointed out that this complaint case has been filed with mala fide intention/oblique motive and it is only counter-blast to the first information report instituted by the petitioner being Patan PS Case No. 20 of 2002 against the complainant under various sections of the IPC. It was also pointed out that the petitioner was discharging her official duty in her office when complainant along with about one hundred persons entered into her office forcefully and started abusing her and introduced himself to be District President of Bahujan Samaj Party and further inquired about the demand letter made by them on which the petitioner informed complainant that she has already forwarded their demand to the higher officer and, this infuriated the complainant and he started abusing the petitioner. It was also pointed out that the complainant wanted to destroy the official file kept on the table and on protest, the complainant caught hold of her neck and started pressing her neck on which her colleague and other employees raised hulla and local people came and saved her life. It is also pointed out that she reported the matter to the police and accordingly, Patan PS Case No. 20 of 2002 was registered and complainant was arrested and sent to jail. Another contention is that no offence u/s 323, IPC is made out against the petitioner as in the entire complaint petition, there is no allegation of any overt act or any assault by the petitioner and allegation that he was called Chamar to cause humiliation to him in the midst of the person is false and fabricated and he wants to take advantage of his being Harijan because a case has been lodged by this petitioner against complainant and other 100 persons under Sections 147/149/341/323/332/333/307/452/477, IPC and he having found himself in trouble has lodged this case to put pressure upon the complainant. Further, no sanction for prosecution of the petitioner from the competent authority has been taken as he is responsible Government official and prosecution of the officer, sanction has to be obtained because Section 197, Cr PC bars prosecution of such Government servant or public servant unless sanction from the competent authority has been obtained for prosecution. In this connection, reliance on behalf of the petitioner was placed upon *Nand Kumar Sinha and Ors. v. State of Bihar and Ors.* 1999 (2) ECC 593 wherein it has been held that a complaint case was directly

filed before the Special Court and he had taken cognizance in the case and accused of that case filed a petition for discharge which was disallowed and thereafter accused filed a Criminal Miscellaneous Petition before the High Court and in the High Court, it was held that the Special Judge has got no power to take cognizance without commitment of the accused person from the lower Court and in that view of the matter, the order refusing to discharge the petitioner was set aside and the case was remitted back to the Court of learned Chief Judicial Magistrate or Additional Chief Judicial Magistrate for adopting proper procedure. Reliance was also placed upon [Bimal Kumar Agarwal Vs. State of Bihar and Others](#), wherein similar view was taken.

4. On the other hand, learned counsel appearing for the O.P. complainant submitted that O.P.-complainant was brutally assaulted and he was humiliated by calling him Chamar and caused humiliation to him in presence of several persons, therefore, cognizance taken in the matter does not require any interference. Reliance was further placed upon *Bokan Yadav and Ors. v. State of Bihar*, 2004 (1) ECC 278 wherein it has been held that defence version should be looked into at the time of trial only and, therefore, refused to quashed proceeding.

5. The petitioner is a public servant holding post of Block Development Officer and further, offence is said to have taken place in the chamber of the petitioner and there is no allegation that any money was taken or something was snatched by the petitioner. There is also no allegation, as it appears from complaint petition, that she took part in the assault. It also appears from the complaint petition that several persons were inside the chamber of the Block Development Officer and she was discharging her duty in official capacity and further a case has been lodged by the petitioner herself as informant bearing Patan PS Case No. 20 of 2002 in which this complainant-O.P. No. 2 and 100 persons have been made accused and there is specific allegation against this complainant. Further, that serious allegation of attempting to commit murder of Block Development Officer has been alleged. In such a situation, it is but natural that in order to save himself from the case, a complaint case has been filed by the complainant-O.P. against this petitioner and other persons. It is true that defence version should be considered at the time of trial stage only, but here case appears to have been filed actuated with malice and further that, there is no allegation actually against the petitioner. A reliance was placed in the case of [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), wherein seven grounds were given and the FIR or the complaint falling in any of the seven grounds may be quashed, these grounds are enumerated herein-below :--

"(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an

investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievances of the aggrieved party.

(7) 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."

On perusal of the grounds referred to in the citation referred above, it appears that the allegations made in the complaint are so absurd and inherently improbable on the basis of which, no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. Here in the instant case, case as made out is that the complainant was staging demonstration along with his supporters and, petitioner is said to have sent message calling three of them and, complainant and two others went inside the room where husband of the petitioner and other police officials including the officer-in-charge of the P.S concerned were present and as soon as complainant and others entered into the chambers of the B.D.O.-petitioner, they started abusing them in filthy language. But as per materials on record, it appears that B.D.O.-petitioner had already instituted a case against the complainant and hundred other persons of causing murderous attack on her u/s 307, IPC besides other section also and thereafter he was arrested and sent to jail and some days after release from jail, he has filed this case alleging allegation against the petitioner and others of calling him Chamar and assaulting him. But this allegation appears to be absurd and actuated with malice because of the fact that a case has already been instituted by the petitioner herself. As per complaint petition, complainant with others were staging demonstration which was peaceful and, therefore, B.D.O.- petitioner is said to have called delegation of three persons and, complainant and two others went to meet her but when peaceful demonstration

was going on and no harm, as per complaint petition, was caused, then there was no reason as to why the said occurrence of abusing in filthy language and assaulting will take place and thus, story appears to be absurd and actuated with malice.

6. In that view of the matter, so far as this petitioner is concerned, this application is allowed and the order dated 2.8.2002 is hereby quashed.