

(2008) 09 JH CK 0002
Jharkhand High Court
Case No: None

Churaman Das Bhandani

APPELLANT

Vs

The State of Jharkhand,
Jagarnath Prasad and Mukesh
Prasad

RESPONDENT

Date of Decision: Sept. 20, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 120B, 406, 420

Hon'ble Judges: Gyan Sudha Mishra, C.J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Gyan Sudha Misra, C.J.

This criminal miscellaneous petition has been filed by the petitioner u/s 482 Cr.P.C, assailing the order dated 12.5.2003 passed by the Judicial Magistrate, 1st Class, Giridih, in T.R. No. 414/2003, by which the application filed by the complainant-petitioner before the Magistrate was rejected.

2. The circumstance giving rise to this application is slightly unusual and peculiar as it appears that the petitioner initially had lodged a complaint against the respondents alleging that he had advanced a sum of Rs. 15,000/- for supply of a feature film titled as "Parayadhan", but the copy of the film was not supplied to the petitioner in spite of the fact that he had paid Rs. 15,000/- to them. He, therefore, filed a compliant petition before the Magistrate for registering the complaint. The complaint was, in fact, registered u/s 406, 420 and 120B I.P.C.

The accused-opp. Parties filed an application before this Court which was registered as Cr. Misc. No. 1000/2000R and the same was heard by a learned Single Judge of this Court. The said Cr.Misc. application was finally disposed of by the order dated

13.7.2000, whereby the learned Single Judge was pleased to direct that if the petitioners, i.e. accused opp. partes herein, pay the amount involved in the proceeding, then the order taking cognizance will stand quashed. The accused opp. parties deposited a sum of Rs. 15,000/- with the Judicial Magistrate, 1st Class, Giridih, where the case for cognizance was pending and the amount is still lying with the aforesaid court, as stated by the Counsel for the petitioner.

The petitioner-complainant, however, was aggrieved of the fact that the amount deposited by the accused-opp. parties was only Rs. 15,000/-, whereas the accused opp. parties should have deposited a sum of Rs. 47,285.75 as the Settlement Board had an occasion to adjudicate the dispute as to how much amount was payable by the accused opp. parties to the petitioner. The said application was rejected by the Judicial Magistrate, vide order dated 12.5.2003, and hence, the petitioner filed the instant Cr.Misc. petition for quashing the order dated 12.5.2003, which is the impugned order under challenge in this application.

3. Assailing the impugned order, Counsel for the petitioner submitted that as the accused opp. parties have failed to deposit the amount determined by the Settlement Board, the case, which had been lodged by the petitioner u/s 406, 420 and 120B I.P.C, ought not to have been quashed by the Magistrate. It was further submitted that if at all the order passed by the High Court was fit to be complied, then the amount determined by the Settlement Board amounting to Rs. 47,285.75 ought to have been paid by the accused opp. parties to the petitioner.

4. Having heard the Counsel for the petitioner at some length and on perusal of the impugned order passed by the Judicial Magistrate as also the order passed by the learned Single Judge, who had permitted the order of cognizance to be quashed after the payment of the amount involved in the proceeding was made, it would appear that the petitioner did not challenge the order passed by the learned Single Judge before any Court earlier including the Supreme Court contending that the order passed by the learned Single Judge was not fit to be complied as the case lodged against the accused opp. parties could not have been quashed even after the payment of Rs. 15,000/- which was the amount involved in the proceeding. The petitioner had clearly acquiesced with the order passed by the learned Single Judge to the effect that if the amount involved was paid by the accused opp. parties to the complainant-petitioner, the case lodged against the accused opp. parties should have been quashed. In fact, the petitioner after passing of the order by the learned Single Judge, had filed an application before the Judicial Magistrate only for a direction that the amount determined by the Settlement Board should have been paid to him and not merely the amount which had been advanced by him to the accused opp. parties. If at all the petitioner was aggrieved of the fact that the payment of Rs. 15,000/-, (which was the actual amount advanced by him to the accused opp. parties, to him) by them as per the order of the learned Single Judge was insufficient and the same should have been paid as per the order of the

Settlement Board, then he was obviously at liberty to assail the order of the learned Single Judge before a higher forum by way of an appeal, demanding that the amount determined by the Settlement Board was required to be paid to him and the case lodged by him against the accused opp.parties was fit to be proceeded in the event of its non-payment and should not have been quashed by the learned Single Judge by passing a conditional order. But the petitioner never challenged the order of the learned Single Judge and thereafter filed an application before the Magistrate that the cognizance should not have been quashed. Once the learned Single Judge rightly or wrongly passed the order that the order taking cognizance shall stand quashed, in case the amount of Rs. 15,000/- involved in the proceeding was paid by the accused opp.parties, it does not lie within his legal domain to challenge the same now by assailing the order passed by the Magistrate, The Counsel for the petitioner is clearly missing that the Magistrate had merely complied the order passed by the learned Single Judge and if, according to the petitioner, the amount to be paid to him should have been higher as per the order of the Settlement Board than the one paid by the accused opp.parties, ho should have at least sought clarification from the learned Single Judge in the earlier matter praying that the amount to be paid by the respondents should be higher than the amount specified by the learned Single Judge.

Thus, the petitioner has failed to make out a case for assailing the order passed by the Magistrate refusing to review the order of cognizance which would have resulted in overriding the order of the learned Single Judge quashing the order of cognizance. This application, under the circumstance, has no merit and is dismissed at the admission stage itself.