

(2004) 07 JH CK 0006

Jharkhand High Court

Case No: Criminal M.P. No. 2 of 2004

Ali Mohammed alias Alim Mian
and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: July 15, 2004

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 190
- Penal Code, 1860 (IPC) - Section 427, 447

Citation: (2005) CriLJ 442

Hon'ble Judges: Hari Shankar Prasad, J

Bench: Single Bench

Advocate: S.K. Ughal and T. Kabiraj, for the Appellant; B.K. Dubey, for the Respondent

Final Decision: Dismissed

Judgement

Hari Shankar Prasad, J.

This application u/s 482 of the Code of Criminal Procedure Is directed against the order dated 5-8-2003 passed in Cr. Misc. No. 914/2003.

2. The facts of the case are that the complainant-petitioner Md. Sadique has filed a complaint case bearing Complaint Case No. 659/2000 against as many as 18 persons including Parmeshwar Bhagat, who was the Circle Officer of Katkamsandi Block alleging therein that Parmeshwar Bhagat demanded Rs. 85,000/- for the settlement of the land, which was claimed by the petitioner-complainant. The petitioner-complainant paid Rs. 25,000/- to Parmeshwar Bhagat under duress. The land in question was measured and it was amicably settled and accordingly on the order of Parmeshwar Bhagat it was agreed that the petitioner-complainant can erect the boundary wall over the piece of land and accordingly petitioner erected the boundary wall about 15 months back. Further case of petitioner -complainant is that on 11-7-2000 at 5 p.m. all the accused persons including Parmeshwar Bhagat

came to the plot and started demolishing the boundary wall erected by the complainant causing heavy loss to him. On the basis of complaint petition an enquiry u/s 202, Cr.P.C. was held and the SDJM vide his order dated 7-1-2002, took cognizance under Sections 427/447, IPC against all the accused persons named in the complaint petition including Parmeshwar Bhagat. Parmeshwar Bhagat being aggrieved by the said order of cognizance, filed in Cr.M.P. No. 809/2002 before this Court and a Bench of this Court, after hearing the matter, quashed the cognizance against Parmeshwar Bhagat, Circle Officer. Thereafter other accused persons of the case, who are accused in the complaint case, also filed Cr.M.P. No. 914/2003 and on the basis of finding of the Bench of this Court in Cr.M.P. No. 809/2002, the cognizance against the petitioners was also set aside holding that as cognizance has been set aside against Parmeshwar Bhagat, there is no reason to allow further proceeding to continue against these petitioners but subsequently another order of that Bench was filed, which showed that cognizance so far as against Parmeshwar Bhagat was concerned, that was set aside and not against other accused persons and, therefore, when this Cr.M.P. was filed then notices were issued upon other accused persons, who appeared on the ground that at the time of hearing of Cr.M.P. No. 809/2002 notices were not served on the opposite party No. 2 and, therefore, the order has not been properly passed.

3. Heard learned counsel for both the sides. From perusal of complaint petition No. 659/2000, it appears that main allegation is against Parmeshwar Bhagat as he not only demanded Rs. 85,000/- for settlement of the land in question but he was actually paid Rs. 25,000/- as per allegation made in the complaint petition. Further there was also an allegation against this Parmeshwar Bhagat that he led a mob of other accused persons and at his instance boundary wall erected by the complainant was demolished and when cognizance against all the accused persons including Parmeshwar Bhagat was taken, he filed a petition and a Bench of this Court set aside the cognizance against Parmeshwar Bhagat then nothing remained against other accused persons because main allegation was against Parmeshwar Bhagat and cognizance against him has been set aside. Therefore, the case of other accused persons is on better footing than that of Parmeshwar Bhagat and there is no question of modifying the order dated 5-8-2003 by which cognizance against them was also quashed.

4. In the result, this application has no merit and is accordingly dismissed. However, the learned counsel, who appeared in Cr.M.P. No. 914/2003 did not correctly place the facts and hence an order as on 5-8-2003 was passed but the same Bench which decided Cr.M.P. No. 809/2002 modified its order to the extent that cognizance dated 7-1-2002 was quashed as against petitioner -Parmeshwar Bhagat only and this fact being within the knowledge of the learned counsel, who appeared in Cr.M.P. No. 914/ 2003, was not correctly placed before this Court and hence the order dated 5-8-2003 was passed. This conduct on the part of the learned counsel is not appreciable.