

(2011) 11 JH CK 0025

Jharkhand High Court

Case No: Writ Petition (Cr.) No. 166 of 2007

Anil Chandra Biswas

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Nov. 11, 2011

Hon'ble Judges: Prakash Tatia, C.J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Prakash Tatia, C.J.

Heard counsel for the parties.

2. The petitioner preferred this writ petition on 6th June, 2007, for quashing the F.I.R in connection with Lalpur P.S. Case No. 40/2007 dated 5th April, 2007, corresponding to G.R. Case No. 1249/2007, Annexure - 16, pending in the court of Chief Judicial Magistrate, Ranchi and also for quashing the entire order dated 28th April, 2007, by virtue of which warrant of arrest has been ordered to be issued against the writ petitioner. On 6th February, 2008, notices were issued to respondent nos.2 to 4 and an interim order was passed that "In the meantime, processes issued against the petitioner vide order dated 28.4.2007 in connection with Lalpur Police Station Case No. 40 of 2007 (G.R. No. 1249 of 2007) shall remain stayed".

3. Learned counsel for the petitioner vehemently submitted that it is a case of civil dispute, wherein a civil suit filed by the writ petitioner is also pending. However, in that suit, stay was refused by the trial court, appeal for grant stay was also rejected by the first appellate court and ultimately the application for grant of stay was refused by the High Court but Hon'ble Supreme Court passed order on 13th October, 2010, in Special Leave to Appeal (Civil) No. 23767/2008, while dismissing the leave petition, holding that no ground is made out to interfere with impugned order with the observation that "Needless to say that if any construction is made during the tendency of the suit, the same shall be subject to its result".

4. Learned counsel for the writ petitioner relied upon the decisions of the Supreme Court rendered in the cases of [State of West Bengal and Others Vs. Swapan Kumar Guha and Others](#), and [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), wherein law has been laid down as to in what circumstances even the investigation cannot allowed and initiation of the criminal proceeding itself can be quashed. It is submitted by the learned counsel for the writ petitioner that though in the F.I.R, there may appear alleged cognizable offence but if they are absurd and on the basis of it, if they are found to be highly improbable, then in that situation, the F.I.R can be quashed. Learned counsel for the writ petitioner vehemently submitted that the writ petitioner is an old person and cannot commit any offence. It is also submitted that during tendency of civil litigation, the criminal proceeding, in the facts and circumstances, is liable to be quashed as in the light of the decisions of the Supreme Court, the parties will be governed by the said decisions and the same be given effect in the suit filed by the writ petitioner.

5. Learned counsel for the State vehemently submitted that though in the present case, the F.I.R was lodged on 5th April, 2007, charge sheet was also submitted on 30th April, 2007, cognizance taken on 30th May, 2007 and admittedly the court issued arrest warrant even on 28th April, 2007, the petitioner sought the relief for quashing the F.I.R only without disclosing the fact that the charge sheet has already been filed in the case before filing of the writ petition and not only this but cognizance was also taken prior to filing of the writ petition. It is also submitted that the petitioner, after getting the interim order dated 6th February, 2008, submitted I.A No. 2214/2009 praying therein for quashing of the order of cognizance. It is further submitted that considering the above conduct of the writ petitioner suppressing material fact, the writ petition of the petitioner deserves to be dismissed. Learned counsel for the State further submitted that it is the admitted case that investigation has already been completed, F.I.R bears cognizable offence and the decisions cited by the learned counsel for the petitioner has no application to the facts of the case.

6. I considered the submissions of the learned counsel for the parties and perused the facts of the case.

7. One F.I.R referred to above was lodged by J.K. Sharan alleging that he has a house of two rooms and he kept Munna Kachchap, Raju Pandey, Pradip Lohar @ Koka Babu and Sonu kumar in one room and Raju Pandey is living with his family and in another room, other persons were residing. On 4th April, 2007 at about 6.00 am Raju Pandey came to the house of the complainant and informed that in the night at 2.30 a.m., Kartik Lohar, Mona Sarkar, Chotu Leheri and two others came with "Gaita, Ghana and Kodai and Khunti", forcibly entered into the house and started abusing and dragged the wife of Raju Pandey outside the house, they demolished the wall etc and took away the utensils. In the F.I.R, it has been mentioned that he has reason to believe that the writ petitioner by criminal conspiracy has given effect to

the incident.

8. In view of the facts stated in the F.I.R, learned counsel for the petitioner was right in confining his argument to the extent that if the story set up is highly improbable and unbelievable, then investigation can be quashed in the light of the decisions referred to above [State of West Bengal and Others Vs. Swapan Kumar Guha and Others](#), and [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), because it cannot be said that F.I.R does not allege committing of cognizable offence. Not only this but even investigation was completed even before filing of this petition, which fact was suppressed by the petitioner. So far as improbability in allegations is concerned, only it has been stated that the writ petitioner is an old person and also is a disabled person and therefore, he could not have committed the offence and if he would have any interest to take possession forcefully, he would have blown the entire structure with the help of bomb. In fact, plea of the writ petitioner is improbable. The arguments of the learned counsel for the petitioner is not appealable in any manner, nor the order passed by the Hon''ble Supreme Court can be of any help to the writ petitioner for getting the entire criminal proceeding quashed because even in civil suit, injunction was refused to the writ petitioner and obviously construction was permitted on the spot subject to the decision of the suit which also is of no help to the writ petitioner, rather is against the petitioner. The contention of the writ petitioner that he had no knowledge of filing of the charge sheet and taking cognizance before filing of the writ petition cannot be believed in the facts and circumstances of the case.

9. Thus, no case is made out for interference by this Court in a proceeding where charge sheet has been filed, writ petitioner is on bail, investigation has been completed by the independent agency and three of the remaining accused already surrendered and have been granted bail by the trial court. Therefore, this writ petition is dismissed.

10. Copy this order be sent to the trial court. The trial court shall proceed to conclude the trial expeditiously, since the petitioner is an old person. The trial court may complete the trial within one year from the date of receipt of a copy of this order.