

(2012) 07 JH CK 0074

Jharkhand High Court

Case No: Criminal M.P. No. 65 of 2012

Satya Lal Ram @ Sat Lal

APPELLANT

Vs

The State of Jharkhand and
Another

RESPONDENT

Date of Decision: July 24, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3)
- Penal Code, 1860 (IPC) - Section 341, 342, 386, 403, 406

Citation: (2012) 4 LJLR 141

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: P. Pallav, for the Appellant; Ashutosh Anand for the Opp. No. 2, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R.R. Prasad, J.

Heard learned counsel appearing for the petitioner, Opp. Party No. 2 and learned counsel appearing for the State. This application is directed against the order dated 14.3.2011 passed in P.C.R. Case No. 594 of 2010 whereby and whereunder the then Chief Judicial Magistrate, Deoghar has taken cognizance of the offences punishable under Sections 341, 342, 386, 403, 406, 417 and 468 of the Indian Penal Code against the petitioner and others.

2. It is the case of the prosecution that for construction of building of the Medical College at Deoghar, one builder namely, M/s L.G. Builders was entrusted the work of construction, who in turn, entrusted the work relating to supply of labour and materials to M/s Jai Guru Constructions, proprietor of which, is the informant, who lodged the case, alleging therein that when certain amount became due to be paid to him by Shiv Dutt Sharma, he repeatedly asked for it but it was not paid. The other

day he was called by Shiv Dutt Sharma to his Office where he under threat was forced to give three blank cheques and was also forced to sign over the blank piece of paper.

3. On such allegation, a complaint was lodged, which was sent before the concerned police station u/s 156(3) Cr.P.C. for its institution and investigation. The police proceeded with the investigation. Meanwhile, the informant filed a petition before the court of learned Chief Judicial Magistrate, Deoghar to the effect that the police is not proceeding with the investigation in the right direction. Ultimately, the police submitted final form whereby police exonerated the accused persons for accusation. On filing of final form, a Protest Petition was filed which was treated to be complaint and was registered as PCR Case No. 594 of 2010.

4. After holding inquiry, the court took cognizance of the offences against this petitioner and also other accused persons. That order is under challenge.

5. It was submitted on behalf of the petitioner that the petitioner had been deputed by the State Government as Bodyguard for the safety of Shiv Dutt Sharma. While he was in duty, the complainant came to the Office of Shiv Dutt Sharma where some altercation took place as there was some business dispute. During that course, Shiv Dutt Sharma when became infuriated, asked this petitioner to shoot him down but admittedly, the petitioner did not do anything and, therefore, the police, did not find any culpability of the petitioner in the alleged offence.

6. Subsequently, when the complaint was filed, no such allegation of committing any overt act was alleged against the petitioner which is evident from Para-29 of the complaint petition wherein it has been stated that when the complainant was called by the accused no. 1 to his office, he asked the complainant to make sign over some blank piece of papers and also to give him blank cheques. Upon refusal by the complainant, the accused no. 1 asked his Bodyguard (petitioner) to kill the complainant and under the fear of death, the complainant put his signature and thumb impression on blank papers and that accused person also took signature over blank cheques. Thus, it is quite evident that the petitioner did not commit any offence under which cognizance of the offence has been taken and, therefore, order taking cognizance is fit to be quashed.

7. As against this, Mr. Ashutosh Anand, learned counsel appearing for the Opp. Party No. 2 submits that it is not that the allegation has only been made in para-29 of the complaint petition rather at other places also the allegations are there wherein it has been alleged that the accused persons did restrain the complainant wrongfully and by putting him under fear extorted three signed cheques from the complainant and also forced him to sign over blank piece of papers.

8. By referring to those paragraphs, it was stated that it is not that the petitioner did not commit any overt act rather overt acts are there and since, those overt acts constitute offence under which, the court below has taken cognizance against the

petitioner and hence, order taking cognizance never warrants to be quashed.

9. I do find substance in the submission advanced on behalf of the Opp. Party No. 2.

10. Since the allegations are there, order taking cognizance never warrants to be quashed.

11. However, the petitioner would be at liberty to raise the issue before the court below relating to insufficiency of the materials for framing charge at the time of discharge.

12. Learned counsel appearing for the petitioner at this stage raised his apprehension that the court below may not appreciate the point which would be taken at the time of discharge as cognizance has already been taken. Such apprehension appears to be unfounded as at the stage of taking cognizance, it is only to be seen as to whether prima facie case is there or not whereas at the stage of discharge it is to be seen as to whether materials are there or not against the accused for securing his conviction. Accordingly, this application stands disposed of.