

(2008) 07 JH CK 0027**Jharkhand High Court****Case No:** None

Ruder Narayan Mahto @ Rudra
Narayan Mahato

APPELLANT**Vs**

The State of Jharkhand and
Rishikesh Mahato

RESPONDENT**Date of Decision:** July 16, 2008**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 202, 204, 482
- Penal Code, 1860 (IPC) - Section 323, 379, 427, 504

Citation: (2008) 4 JCR 760**Hon'ble Judges:** Dilip kumar sinha, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

D.K. Sinha, J.

The petitioner has invoked the inherent jurisdiction of this Court u/s 482 Cr.P.C. for quashment of the entire criminal proceeding including the order dated 10.08.2002 in Complaint Case No. 142 of 2002 whereby the learned Judicial Magistrate found prima facie case after enquiry for the alleged offence u/s 323/427/504 and 379 I.P.C. and directed the processes to be issued against him.

2. The complainant-O.P. No. 2 (Rishikesh Mahato) entered appearance by executing Vakalatnama

3. The brief fact of the case was that the O.P. No. 2-complainant filed a Complaint Case No. 142 of 2002 before the C.J.M., Ranchi stating, inter alia, that he had a piece of land at Khijul Toli, measuring an area of 1.66 acres appertaining to Khata No. 139, Plot. No. 1474. While he was raising boundary wall over the said land on 19.2.2002 the accused persons including the petitioner came there at about 3 p.m. and demanded Rs. 50,000/- from the complainant. On the refusal there being made it

was alleged that all the accused persons threatened that they would demolish the boundary wall and would also commit his murder. Boundary wall which was raised by the complainant-O.P. No. 2 was found demolished on 22.02.2002. It was further alleged that the accused persons with the anti-social elements, variously armed came there abused, assaulted the complainant and reiterated their demand of Rs. 50,000/- and ultimately removed Rs. 3500/- forcibly from the pocket of the complainant. No sooner did the witnesses arrive at the scene, the accused escaped. On 24.2.2002 when he visited the site of construction he found that two trucks load of bricks were removed from the place of construction and in that manner the complainant sustained loss of worth Rs. 40,000/-.

4. In course of enquiry u/s 202 Cr.P.C., besides the statement of the complainant on solemn affirmation, two other witnesses viz. Basant Lobra & Tupan Pathak were examined and thereafter the impugned order as aforesaid was passed.

5. Learned Counsel submitted that the petitioner was the Principal of Ramtahal Choudhary High School, Booty at Ranchi, adjacent to the alleged place of occurrence. He was also the member of Gramvasi Alp-Shankayak Vidya Vardhani Samitue, registered under the Registration of Societies Act, used to purchase the welfare work of public at large. The entire land of Plot No. 1474 appertaining to Khata No. 139 belonged to the common ancestor. A Partition Suit No. 119 of 1946 was filed by one Babu Niranjan Choudhary in the court of Sub-Judge, Ranchi in which the father of the petitioner Chintamani Mahato @ Chiter Bha Mahato was impleaded as defendant No. 2 but the disputed Plot No. 1474 appertaining to Khata No. 139 measuring 1.66 acres could not be partitioned which remained as the joint family property. The complainant-O.P. No. 2 had preferred a case No. 4/81-82 claiming 1.66 acres of hand in Plot Mo. 1474, Khata No. 139 being his self acquisition on the basis of a Hukumnama but his such claim was dismissed by the Circle Officer, Ranchi by the order dated 10.3.1988, holding the Hukumnama being the forged document and it was held therein that the complainant-O.P. No. 2 was entitled to only 1/9th share in the said property.

6. Learned Counsel submitted that all the co-sharers of the land situated in Plot No. 1474, Khata No. 139 measuring an area of 1.66 acres entered into an agreement with one Shri Parasnath Mahato, the Secretary of the Gramvasi Alp-Shankayak Vidya Vardhani Samitee, Booty, Ranchi on 13.06.1985 in which the petitioner was one of the member whereby, the said land measuring 1.66 acres was gifted to the society. In view of such agreement and transfer of the land to the society the O.P. No. 2-complainant had no right, title or interest over the said land and the witnesses were silent in course of enquiry u/s 202 Cr.P.C. about the identity of the accused persons who had demanded extortion money (Rangdari). It could not be gathered during enquiry u/s 202 Code of Criminal Procedure as to by whom mischief was caused by demolishing the boundary wall. The Counsel finally submitted that at not stretch of imagination any offence alleged u/s 323/427/504 and 379 Indian Penal

Code is made out against the petitioner who was admittedly a co-sharer in the property. The learned Magistrate while drawing order u/s 204 Code of Criminal Procedure did not find material in respect of allegation of extortion against the petitioner.

7. Mr. C.S. Prasad, learned Counsel for the O.P. No. 2-Complainant supporting the counter-affidavit submitted that the title over a land cannot be decided in a criminal case and the learned Judicial Magistrate having been satisfied with the materials collected in course of enquiry u/s 202 Cr.P.C. found prima facie case against the petitioner and others for the offence under Sections 323/427/504/379 I.P.C. which does not call for interference at this stage.

8. Having regard to the facts and circumstances of the case, I find that after enquiry u/s 202 Cr.P.C. the learned Judicial Magistrate find materials against the petitioner Ruder Narayan Mahto @ Rudra Narayan Mahato to proceed against him for the alleged offence under Sections 323/427/504 & 379 I.P.C. The Apex Court has consistently propounded that the inherent power of the Court u/s 482 Code of Criminal Procedure should be exercised sparingly and with circumspection when there is reason to believe that process of law is being misused to harass a citizen. It is further settled that the evidence collected in course of enquiry cannot be weighed and evaluated while exercising the inherent jurisdiction and therefore on the face value of the allegation alleged against the petitioner, I am not inclined and hence the prayer for the quashment of the criminal prosecution of the petitioner cannot sustain. There being no merit, this petition is dismissed but with the liberty to the petitioner to agitate the matter at the time of framing of charge against him, which may be considered by the Court without being prejudiced by this order of dismissal.