

**(2009) 01 JH CK 0030**

**Jharkhand High Court**

**Case No:** None

Pitharam Samoda and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

**Date of Decision:** Jan. 5, 2009

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 34, 420, 467, 468

**Hon'ble Judges:** Narendra Nath Tiwari, J

**Bench:** Single Bench

### **Judgement**

@JUDGMENTTAG-ORDER

N.N. Tiwari, J.

In spite of service of notice, nobody appeared on behalf of opposite party No. 2 in the Cr. Misc. Petition.

2. In interlocutory application, the petitioners have sought to bring on record the subsequent development in the civil suit between the parties, which was in respect of the same land dispute out of which the criminal case arose.

3. In the FIR. the informant-O.P. No. 2 had complained that he had not executed any agreement dated 22.11.1966 in favour of Pitharam Samoda (petitioner No. 1) and that he had submitted a forged document with the signature of the informant only in order to deprive him of the property being Hotel No. 4, Block No. 1 of Gumla Market. The FIR was lodged mainly on the said complaint against the petitioner No. 1. The other petitioners happen to be the relatives and the witnesses of petitioner No. 1. The informant had also mentioned about institution of Title Suit No. 43/92 in the Court of Sub-Judge, Jamshedpur. Learned Magistrate on the basis of the said complaint had taken cognizance of the offences under Sections 420, 467 and 468/34 of the Indian Penal Code against the petitioners. The petitioners by way of instant interlocutory application have brought on record the subsequent development with regard to disposal of said Title Suit No. 43/ 92 in terms of the settlement mutually

arrived at between the parties. Learned Sub-Judge, Jamshedpur has disposed of the said suit in terms of the compromise. The petitioners have brought on record the deposition of O.P. No. 2 in support of the settlement as also the compromise petition signed by both the parties. In the said petition, supported by the deposition of O.P. No. 2. the O.P. No. 2 has admitted the title and possession of the defendants over the disputed property.

4. Mr. Sen, learned Counsel, appearing on behalf of the petitioners, submitted that on bare reading of the FIR, it would be evident that O.P. No. 2 had challenged the right, title and possession over the disputed property, which was subject matter of the said Title Suit No. 43/92. The entire allegations made in the FIR did not constitute any offence as the same were based on the said civil dispute, which was subject matter of Title Suit No. 43/92. The said title suit having been now disposed of in terms of settlement, the O.P. No. 2 is not even having a civil cause as on today. The order taking cognizance is, thus, unsustainable and the entire criminal proceeding is an abuse of the process of the Court.

5. Learned A.P.P. has not disputed the said contentions of the learned Counsel for the petitioners. He has fairly submitted that since the dispute was mainly on the property, in question and the civil suit arising out of the said dispute has been compromised by the parties and the compromise decree has already been passed by the learned Court below, further proceeding in the criminal case will not be proper and in the interest of justice.

6. Considering the above, this application is allowed. The order taking cognizance dated 12.1.2001 passed by the learned Judicial Magistrate, 1st Class, Jamshedpur in G.R. Case No. 196 of 1994 is. hereby, quashed as also the, entire criminal proceeding is hereby, quashed.

7. Both the Cr. Misc. Petition and the Interlocutory Application are disposed of accordingly.