

(2009) 10 JH CK 0019

Jharkhand High Court

Case No: None

Anuj Kumar Sinha and Haribansh
Narayan Singh @ Harbansh

APPELLANT

Vs

The State of Jharkhand and
Another

RESPONDENT

Date of Decision: Oct. 9, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 425, 427

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Final Decision: Allowed

Judgement

R.R. Prasad, J.

Heard learned Counsel appearing for the petitioners, State and learned Counsel appearing for the Opposite Party No. 2.

2. This writ application has been filed u/s 482 Cr.P.C. for quashing the entire criminal proceeding of Complaint Case No. 782 of 2003 including order dated 09.03.2004 under which cognizance of the offence u/s 427 of the Indian Penal Code has been taken by the then learned Judicial Magistrate, Ranchi against these petitioners.

3. The case of the complainant-Ajay Chandra Sinha, the Chief Executive of "Stem International Limited" a registered Company to which Stem Associate Care is a sister concern, is that Stern Associate Care had introduced a business plan called "Hexagon Income", which had received wide appreciation in general public and as such business of the Company had flourished considerably. In order to give further boost to the growth rate of the business, the complainant arranged to hold a Mega Seminar scheduled to be held on 9th February, 2003, Ranchi for which wide publicity had been made so that the persons interested not only of the State of Bihar and

Jharkhand but also from the West Bengal, Orissa, Uttar Pradesh, Chhattisgarh, Madhya Pradesh may participate. But the accused persons in order to feed their feet, mischievously published a news item in the Newspaper of Jamshedpur Edition on 07.02.2203 and 09.02.2003 about the call of Bund given by the M.C.C. in the whole Jharkhand but in fact the call of Bund was limited to certain areas of Palamau and Chatra and this was done only to frustrate the programme of Mega Seminar. On account of publication of such false News, the people became fearful, as a result of which attendance of the people at Mega Seminar was quite thin, which affected the growth rate of the business of the Stem Associate and, thereby, the petitioners committed offence u/s 427 of the Indian Penal Code.

4. Learned court below, after holding inquiry found prima facie case u/s 427 of the Indian Penal Code and hence, took cognizance of the said offence against the petitioners vide its order dated 09.03.2004.

5. Being aggrieved with the said order, this writ application has been filed by these petitioners.

6. Learned Counsel appearing for the petitioners submits that taking the entire allegations made in the complaint petition to be true, no offence is made out u/s 427 of the Indian Penal Code, as admittedly, none of the accused persons have been alleged to have caused destruction of any tangible property nor they have been alleged to have destroyed or diminished the value of the property and as such there would be an abuse of the process of law, if the complaint case is allowed to be continued.

7. As against this, learned Counsel appearing for the Opposite Party No. 2 submits that the factum of causing damage is to be ascertained in course of trial which is proceeding with and as such no Interference with the proceeding of the case, warrants to be made at this stage.

8. Having heard counsel for the parties, it does appear that on the allegation made in the complaint petition, though cognizance of the offence u/s 427 of the Indian Penal Code has been taken, the question which has cropped up is, as to whether any offence of mischief is made out even if the entire allegations made in the complaint are taken to be true? "Mischief has been defined in Section 425 of the Indian Penal Code, which reads as follows:

Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to

any person by injuring any property, whether it belongs to that person or not.

Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

9. Thus in order to constitute an offence u/s 425 of the Indian Penal Code, following ingredients should be there.

(i) The accused caused destruction of some property or some change in any property or in the situation of the said property.

(ii) Such act destroys or diminishes its value or its utility or affect it injuriously.

(iii) The accused did so intending or knowing that he was likely to cause loss or damage to the public or any persons.

(iv) The causing of such damage or injury was wrongful.

10. Therefore, beside the necessary criminal intent, other essential ingredients of this offence would be causing of "destruction of any property" or any such change in any property or it destroys or diminishes its value or utility. The destruction of any property implies of physical injury from physical cause. In other words the term property u/s 425 of the Indian Penal Code always means tangible property whereas in the instant case, the allegation is of causing damage to future prospect of the business of the company, which in my view will not fall within the domain of mischief as defined u/s 425 of the Indian Penal Code.

11. In that view of the matter, continuance of any criminal proceeding in such event would be an abuse of the process of law.

12. Accordingly, entire criminal proceeding of Complaint Case No. 782 of 2003 including order dated 09.03.2004 under which cognizance of the offence u/s 427 of the Indian Penal Code has been taken by the then learned Judicial Magistrate, Ranchi against these petitioners, is hereby, quashed.

13. In the result, this application is allowed.