

(2004) 05 JH CK 0074

Jharkhand High Court

Case No: Criminal Miscellaneous No. 1473 of 1999

Surendra Nath Das

APPELLANT

Vs

State of Jharkhand
and Another

RESPONDENT

Date of Decision: May 13, 2004

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482

Citation: (2004) 2 JCJR 1 : (2004) CriLJ 2952 : (2004) AIR Jhar HCR 1769 : (2006) 2 JLR 89 :
(2006) 1 JCR 170

Hon'ble Judges: Hari Shankar Prasad, J

Bench: Single Bench

Advocate: M.K. Sinha, for the Appellant; Mahesh Tiwary and M. Hatim, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Hari Shankar Prasad, J.

This application u/s 482 of the Code of Criminal Procedure has been filed for quashing the entire proceedings initiated against the petitioner in Complaint Case No. 425/95 on 3-9-1996 under Sections 323 and 341, IPC including order taking cognizance dated 26-2-1998.

2. Facts giving rise to the filing of this application are that the opposite party No. 2 (hereinafter referred to as the "complainant") filed a complaint case being Complaint Case No. 425/96 alleging therein that on 2nd August, 1996 at about 3 pm. while complainant was returning from Bijupara to his home then a jeep stopped in the way and all the accused persons including the petitioner got down from the jeep and surrounded the complainant and Kumar Parasnath uttered to give him kicks and demands accounts and thereafter Suresh Prasad gave him fists and slap and other accused persons caught his hair and forcibly threw him in the jeep and caused

injury to the complainant on elbow and his head. When he enquired into the fact then in abusing language Parasnath threatened him to teach a lesson. He was taken to Mander Chowk but complainant requested to let him to inform his family members. He was produced before Surendra Nath Das and Parasnath asked him to put some signatures on blank papers. Thereafter Surendra Nath caught his hair and pushed him and out of fear the complainant put his signatures on three blank papers. The complainant protested that other persons, who have taken loan from him, their loan amount to the tune of Rs. 10,000/- has been waived then why his loan amount should not be waived. Thereafter, Suresh Prasad told him that he waived the loan amount of those persons, who paid the money to them. He was taken to Ranchi jail, where he remained from 2-8-1996 to 5-8-1996. Thereafter son of the informant, in one instalment, deposited sum of Rs. 15,000/- and in token of payment of Rs. 15,000/- a backdated receipt was granted to the son of the complainant and thereafter complainant was released from jail. Cause of occurrence is said to be the fact that accused persons-petitioners were demanding money for giving the loan amount and complainant was not ready for the same and complainant always demanded the account of the loan amount in writing and accused persons including the petitioners were not ready to provide the accounts of the loan amount and due to this very matter, there was some scuffle between the complainant and accused persons including the petitioners and thereafter accused persons hatched up a conspiracy and complainant was arrested.

3. Learned counsel appearing for the petitioner, submitted that before taking cognizance in the case, five witnesses were examined u/s 202, Cr.P.C. (Annexure-3) and not a single witness has supported the case against the petitioner. It was further pointed out that the learned Magistrate, without applying his judicial mind, has taken cognizance against the petitioner, without obtaining sanction order u/s 197, Cr.P.C. and without considering the police report and depositions recorded u/s 202, Cr.P.C. It was further pointed out that petitioner was delegated with the powers of certificate officer by the Commissioner of South Chotanagpur Division, Ranchi under the provisions of Bihar and Orissa Public Demand Recovery Act, 1914 (Annexure-5). It was further pointed out that on the requisition of Branch Manager of the concerned Branch, a certificate case being Certificate Case No. 126/93-94 was filed against the complainant before the petitioner, who issued a notice u/s 7 of the Act against the complainant to file show cause but complainant neither appeared nor filed any show cause. Thereafter the petitioner issued a warrant of attachment for realization of certificate amount upon the complainant u/s 30 of the Act on 9-6-1993 still the complainant did not deposit the amount and finding no way out the petitioner issued a notice to the complainant on 5-1-1995 to show cause why warrant should not be issued against him and in pursuance of that, the complainant was arrested. The complainant was arrested on 2-8-1996 and, therefore, there is no laches on the part of the certificate officer. It was further pointed out that without obtaining sanction order no prosecution can be launched against the petitioner and

in this connection reliance was placed on [N.K. Ogle Vs. Sanwaldas @ Sanwalmal Ahuja](#), wherein it has been held that when there is connection between the act complained and the discharge of the official duty by the Government servant then initiation of prosecution in absence of sanction for prosecution is not maintainable.

4. On the other hand, a counter-affidavit has been filed and from perusal of para 12 of the counter-affidavit, it appears that allegation against the petitioner is that he also abused and assaulted and forced the complainant to sign on three blank papers. It was also pointed out that receipts regarding payment of Rs. 15,000/- in instalment has been issued backdated and when these amount of Rs. 15,000/- had already been paid prior to the date of his arrest then he would not have been arrested. It was also pointed out that in a series of cases Bank Officials have not been given protection u/s 197, Cr.P.C. and in this connection reliance was also placed upon [Shambhoo Nath Misra Vs. State of U.P. and others](#), .

5. On perusal of materials on record, it appears that petitioner has claimed benefit u/s 197, Cr.P.C. being a Government Official deputed as a certificate officer by the order of the Commissioner, South Chotanagpur Division, Ranchi and in this connection reliance has been placed upon some case laws discussed above. But from perusal of counter-affidavit and after going through various annexures of the petitioner as well as of the opposite party No. 2 complainant, it appears, that the complainant remained in custody from 5-8-1996 to 29-8-1996, although as per Annexure H to the counter-affidavit, it appears that due amount was shown to have been paid in the month of June, 1996 and, therefore, there was no reason for sending the complainant to jail. The allegation against the petitioner is also for fabricating the documents. Notice said to have been issued but in fact notice was never served on the opposite party No. 2 complainant and as per allegation signatures obtained on blank paper have been converted into the document of notice but from perusal of these annexures, it appears that complainant has signed on the back portion of the form on different dates and the petitioner being certificate officer was not required to serve notice of show cause of attachment notice etc. His duty was only to issue notice or show cause. It appears from the complaint petition that allegations made in the complaint are so absurd and inherently improbable on the basis of which no one can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. In this connection, reliance may be placed on [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), . The allegations of serious nature are against other co-accused and not against this petitioner and from complaint actually no allegation appears to have been made out.

6. In the result, this application is allowed and the entire proceeding including order taking cognizance dated 26-2-1998 is quashed.