IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.1605 of 2026

Ashish Tirkey, Aged about 29 years, Son of Dhaneshwar Lohra, Resident of Village- Nawasoso, PO+PS- Ratu, Dist.- Ranchi, Jharkhand.

… Petitioner

Versus

The State of Jharkhand … Opposite Party

For the Petitioner : Mr. Avishek Prasad, Advocate
For the State : Mr. Shailesh Kr. Sinha, Addl.P.P.

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of the B.N.S.S., 2023 with the prayer to quash the entire criminal proceeding in connection with Sukhdeonagar (Pandra) P.S. Case No. 159 of 2025 corresponding to G.R. Case No. 1765 of 2025 which upon being committed to the Court of Sessions, has been numbered as S.T. Case No. 506 of 2025 including the order taking cognizance dated 21.06.2025 passed by the learned Judicial Magistrate-XXXI, Ranchi in the said case.

3. The brief fact of the case is that on the basis of the written report submitted by the informant, police registered Sukhdeonagar (Pandra) P.S. Case No. 159 of 2025 and took up investigation of the case. After completion of investigation of the case, police submitted charge sheet

against the petitioner for having committed the offences punishable under Sections 376(2)(n), 417, 504, 506 of the Indian Penal Code but the learned Judicial Magistrate-XXXI, Ranchi though has mentioned that the *prima facie* case is made out for the offences punishable under Sections 376(2)(n), 417, 504, 506 of the Indian Penal Code against the petitioner but has taken cognizance of the offences punishable under Sections 376(2)(n), 417, 323 of the Indian Penal Code against him.

4. Learned counsel for the petitioner submits that at the stage of taking cognizance on the basis of the charge sheet submitted by the police in a police case, the learned Judicial Magistrate-XXXI, Ranchi cannot add or subtract any Section. Hence, it is submitted that the impugned order dated 21.06.2025 passed by the learned Judicial Magistrate-XXXI, Ranchi in connection with Sukhdeonagar (Pandra) P.S. Case No. 159 of 2025 corresponding to G.R. Case No. 1765 of 2025, be quashed and set aside.

5. Learned Additional Public Prosecutor appearing for the State on the other hand fairly submits that the learned Judicial Magistrate-XXXI, Ranchi, because of printing error, though has mentioned that *prima facie* case is made out against the petitioner for having committed the offences punishable under Sections 376(2)(n), 417, 504, 506 of the Indian Penal Code but has taken cognizance of the offences punishable under Sections 376(2)(n), 417, 323 of the Indian Penal Code.

6. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is

pertinent to mention here that it is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **State of Gujarat vs. Girish Radhakrishnan Varde** reported in **(2014) 3 SCC 659**, para-15 of which reads as under:-

> *"15. The question, therefore, emerges as to whether the complainant/informant/prosecution would be precluded from seeking a remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the prosecution cannot be allowed to suffer prejudice by ignoring exclusion of the sections which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offences into the charge-sheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this lacunae can be allowed to be filled in by the Magistrate before whom the matter comes up for taking cognizance after submission of the charge-sheet and as already stated, the Magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge under Sections 216, 218 or under Section 228 CrPC as the case may be which means that after submission of the charge-sheet it will be open for the prosecution to contend before the appropriate trial court at the stage of framing of charge to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. Simultaneously, the accused also has the liberty at this stage to submit whether the charge under a particular provision should be framed or not and this is the appropriate forum in a case based on police report to determine whether the charge can be framed and a particular section can be added or removed depending upon the material collected during investigation as also the facts disclosed in the FIR and the charge-sheet." (Emphasis supplied)*

that if the investigating authorities for any reason whatsoever have failed to include all the offences into the charge-sheet based on the FIR on which investigation had been conducted, the Magistrate

before whom the matter comes up for taking cognizance after submission of the charge-sheet, cannot fill up the lacunae. The Magistrate in a case which is based on a Police Report cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge.

7. The undisputed fact remains that the charge is yet to be framed and the case is next fixed to 17.06.2026 for appearance of the petitioner.

8. Considering the aforesaid settled principle of law, this Court has no hesitation in holding that since the learned Judicial Magistrate-XXXI, Ranchi has taken cognizance by the impugned order dated 21.06.2025 passed in connection with Sukhdeonagar (Pandra) P.S. Case No. 159 of 2025 corresponding to G.R. Case No. 1765 of 2025 based on the charge sheet submitted in a police case, certainly the learned Judicial Magistrate-XXXI, Ranchi has committed a grave illegality by taking cognizance of the offence punishable under Section 323 of the Indian Penal Code besides other offences though for the said offences, charge sheet was never submitted and though she herself has stated that *prima facie* case is made out for the offences punishable under Sections 376(2)(n), 417, 504, 506 of the Indian Penal Code but there is no reference of Section 323 of the Indian Penal Code. Hence, this Court is of the considered view that the said impugned order dated 21.06.2025 passed in connection with Sukhdeonagar (Pandra) P.S. Case No. 159 of 2025 corresponding to G.R. Case No. 1765 of 2025 is not sustainable in

law. Therefore, the same be quashed and set aside against the petitioner named above.

9. Accordingly, the said impugned order dated 21.06.2025 passed in connection with Sukhdeonagar (Pandra) P.S. Case No. 159 of 2025 corresponding to G.R. Case No. 1765 of 2025, is quashed and set aside against the petitioner named above.

10. In the result, this Criminal Miscellaneous Petition is allowed to the aforesaid extent only.

11. The learned Judicial Magistrate-XXXI, Ranchi is directed to pass a fresh order in accordance with law.

12. Let a copy of this judgment be communicated to the court concerned by fax if cost of Rs.100/- per page is deposited by the petitioner with the Registry of this Court.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 11th of June, 2026
AFR/ Saroj

Uploaded on 12/06/2026