IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1497 of 2023

Md. Firoz Quraishi @ Mohammad Firoj Quraishi @ Firoz, aged about 47 years, S/o Late Mohammad Arif Quraishi, resident of Imarat Nagar, Domtoli, P.O. & P.S. –Lower Bazar, District –Ranchi -834001.

.... Petitioner

Versus

1. State of Jharkhand
2. Farhan Quraishi, S/o Javed Quraishi,
3. Faizan Quraishi, S/o Javed Quraishi,
4. Zahid Quraishi, S/o Khabul Quraishi

O.P. Nos. 2 to 4 presently residing at Azad Basti, Phool Bagan, P.O. & P.S. –Lower Bazar, District –Ranchi.

…. Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

…..

For the Petitioner : Md. Anisurzzama Khan, Advocate
For the State : Mr. Abhay Kr. Tiwari, Addl. P.P.
For the O.P. Nos.2 to 4 : Mr. Nilesh Kumar, Advocate
: Mr. Ayush Kr. Verma, Advocate

…..

By the Court:-

1. Heard the parties.

2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 Cr.P.C. with a prayer to quash the part of the order dated 14.03.2023, passed in Criminal Revision No. 51 of 2023 by the learned Judicial Commissioner, Ranchi by which the learned Judicial Commissioner, Ranchi has affirmed the order dated 10.02.2022, passed in Lower Bazar P.S. Case No. 213 of 2021 corresponding to G.R. Case No. 168 of 2022, by the learned Judicial Magistrate -1st Class, Ranchi by which even though charge sheet has been submitted by the police finding that

the offence punishable under Section 307 Indian Penal Code is also made out but the learned Judicial Magistrate did not take cognizance of the offence punishable under Section 307 of the Indian Penal Code but took cognizance of the remaining offences in respect of which the chargehseet was submitted and the learned Judicial Commissioner, Ranchi vide order dated 14.03.2023 in Criminal Revision No. 51 of 2023 without finding any necessity to interfere with the impugned order, dismissed the criminal revision.

3. The brief fact of the case is that F.I.R. was instituted on the written report of the informant who is the petitioner herein against the opposite party nos. 2 to 4 as accused persons for having committed the offences punishable under Section 341/323/324/307/34. Police after investigation of the case found the allegations to be true and submitted charge sheet mentioning therein that the opposite party nos.2 to 4 who are the accused persons of the said case have committed the offences punishable under Section 341/323/324/307/34 but the learned Magistrte in the order dated 10.02.2022 observed that the perusal of the case diary and case record reveals that there is no ingredient of attempting to murder and therefore took cognizance of the offences punishable only under Section 323/324/341/34 of the Indian Penal Code.

4. It is submitted by the learned counsel for the petitioner relying upon the Judgment of the Hon'ble Supreme Court of India in the

case of **S.K. Khaja Vs. The State of Maharashtra** in **Criminal Appeal No. 1183 of 2011 dated 23.08.2023** that in the facts of that case where only simple injuries were sustained by the victim, the Hon'ble Supreme Court of India sustained the conviction under Section 307 of the Indian Penal Code also. It is next submitted that the Magistrate cannot add or subtract the Sections mentioned in the charge sheet at the time of taking cognizance. Hence, it is submitted that the prayer as prayed for by the petitioner in this criminal miscellaneous petition be allowed.

5. The learned Addl. P.P. and the learned counsel for the opposite party nos.2 to 4 on the other hand vehemently opposes the prayer as made in this criminal miscellaneous petition and submits that the offence punishable under Section 307 of the Indian Penal Code being not made out in the facts of the case, the learned Magistrate has rightly not taken cognizance of the offence punishable under Section 307 of the Indian Penal Code. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

6. Having heard the submissions made at the Bar and after going through the materials available in the record, it is pertinent to mention here that it is a settled principle of law that the Magistrate before whom the matter comes up for taking cognizance after submission of charge-sheet based on police report, cannot add or subtract Sections at the time of cognizance; as the same would be permissible by the trial court only at the

time of framing the charge under Section 216, 218 or under Section 228 of the Cr.P.C. as the case may be; 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)*

7. In view of the settled principle of law, this Court has no hesitation in holding that the learned Magistrate has committed a

grave illegality by subtracting Section 307 of the Indian Penal Code , the offences which were found by the police of the investigation of the case, to have been committed by the petitioner and as mentioned in the chargesheet, at the time of taking cognizance of the same, vide order dated 10.02.2022. The learned Judicial Commissioner has also committed a grave illegality by not considering the said settled principle of law, while passing the order dated 14.03.2023 in Criminal Revision No. 51 of 2023.

8. Accordingly, both the orders dated 10.02.2022, passed by the learned Judicial Magistrate -1st Class, Ranchi in G.R. Case No. 168 of 2022 arising out of Lower Bazar P.S. Case No. 213 of 2021 and the order dated 14.03.2023, passed by the learned Judicial Commissioner, Ranchi in Criminal Revision No. 51 of 2023 being not sustainable in law are quashed and set aside.

9. The learned Judicial Magistrate -1st Class, Ranchi is directed to pass a fresh order in accordance with law.

10. In the result, this criminal miscellaneous petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 19th December, 2024
AFR/Sonu-Gunjan/-