IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1815 of 2021

1. Bhavneet Singh, aged about 43 years, son of Davindra Singh Bindra
2. Santosh Kaur, aged about 69 years, wife of D.S. Bindra.

Both are residents of Bye-Pass Road, Near Bank of India, P.O. – Telodih, P.S. –Chas, District –Bokaro, Jharkhand.

.... Petitioners

Versus

The State of Jharkhand .... Opp. Party

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

.....

For the Petitioner : Mr. Jai Shankar Tripathi, Advocate
: Mr. Saurabh Shekhar, Advocate
: Mr. Aman Dayal Singh, Advocate
: Mr. Sahil Lakra, Advocate

For the State : Mr. Manoj Kumar, G.A.-III

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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/set aside the entire criminal proceeding including the F.I.R. in connection with Chas P.S. Case No. 194 of 2020 corresponding to G.R. Case No. 265 of 2021 and the order taking cognizance dated 27.02.2021 and subsequent order by which penal provision in respect of which the cognizance has been taken has been amended i.e., order dated 08.07.2021, passed in the said case by the learned Chief Judicial Magistrate, Bokaro.

3. The allegation against the petitioners is that the petitioners being the owner of the premises in which the employer of the informant is

running a Megamart, caused nuisance by locking the electricity switch room and not allowing the employer of the informant, as the rent of the said premises was not paid by the informant to the petitioners in view of the store remaining closed; because of the lockdown imposed by the government upon out-break of the COVID-19 Pandemic.

4. It is submitted by the learned counsel for the petitioners that the allegations against the petitioners are false. It is next submitted that even if the entire allegation made against the petitioners are considered to be true, none of the offences punishable under Section 269/426/447 of the Indian Penal Code is made out. Hence, it is submitted that the prayer as prayed for by the petitioners in this criminal miscellaneous petition be allowed.

5. The learned G.A.-III on the other hand vehemently opposes the prayer as made in this criminal miscellaneous petition and submits that there is direct and specific allegation against the petitioners of having committed the offences in respect of which charge sheet has been submitted *albeit* the charge sheet has been submitted not for penal provisions but for the definition of the offences. 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 by the order dated 08.07.2021, the offences in respect of which cognizance has been taken has been modified to the

offences punishable under Section 269/426/447 of the Indian Penal Code.

7. So far as the offence punishable under Section 269 is concerned, the essential ingredients of the offence are:-

(i) The accused committed some act fraudulently or negligently;

(ii) Such act was likely to spread infection of a disease dangerous to human life; and

(iii) The accused knew or had reason to believe that this act was likely to spread such infection.

8. Now coming to the facts of the case, there is absolutely no allegation against the petitioner that the petitioner did any act which was likely to spread infection of any disease dangerous to human life. In the absence of any allegation of this essential ingredient, this Court is of the considered view that even if the entire allegations made in the F.I.R., case diary and the charge sheet are considered to be true in their entirety, still the offence punishable under Section 269 of the Indian Penal Code is not made out.

9. The next offence in respect of which cognizance has been taken is punishable under Section 426 of the Indian Penal Code. The essential ingredients to constitute the offence punishable under Section 426 of the Indian Penal Code are:-

(i) The accused caused destruction of some property or some change in it or its situation;

(ii) Such change must have destroyed or diminished the value or utility of the property or affected it injuriously;

(iii) Such destruction or change in the property or situation thereof must have been done with the intention of causing or with the knowledge that is likely to cause wrongful loss or damage to any person or to the public as has been held by the Hon'ble Supreme Court of India in the case of **Narayan Mondal Vs. State** reported in **AIR 1972 SC 665.**

10. Now coming to the facts of the case there is absolutely no allegation against the petitioners of causing any destruction of the property or making any change in it or its situation. Nor there is any allegation against the petitioners of change made by the petitioners have destroyed or diminished the value or utility of the property or affected it injuriously. Under such circumstances, this Court is of the considered view that in the absence of any allegation about this essential ingredient to constitute the offence punishable under Section 426 of the Indian Penal Code even if the entire allegation made in the F.I.R., charge sheet and case diary are considered to be true in their entirety, still the offence punishable under Section 426 of the Indian Penal Code is not made out.

11. The third offence in respect of which cognizance has been taken by the learned Chief Judicial Magistrate is Section 447 of the Indian Penal Code but the essential ingredient to constitute the offence punishable under Section 447 of the Indian Penal Code are:-

(i) The complainant was in possession of the property;

(ii) The accused entered into or upon the property unlawfully or having entered into or upon such property lawfully remains there with an intention to

(a) commit an offence;

(b) intimidate;

(c) insult;

(d) annoy any person in possession of the property.

12. Now coming to the facts of the case, the undisputed fact remains that the petitioners are the owners of the property and they have given it on rent to the employer of the informant to run a Megamart. Under such circumstances, the petitioners being admittedly the owner of the property, they cannot be said to have entered into the property unlawfully nor there is any allegation against the petitioners of entering into property to commit any offence or intimidate or insult or annoy any person. Therefore, even if the entire allegation made against the petitioners in the F.I.R., charge sheet and the case diary are considered to be true in their entirety, still the offence punishable under Section 447 of the Indian Penal Code is not made out.

13. As none of the offences in respect of which cognizance has been taken by the learned Chief Judicial Magistrate is made out against the petitioners, hence in the considered opinion of this Court, the continuation of this criminal proceeding will amount to abuse of process of law. Therefore, this is a fit case where the entire criminal proceeding including the F.I.R. in connection with Chas P.S. Case

No. 194 of 2020 corresponding to G.R. Case No. 265 of 2021 and the order taking cognizance dated 27.02.2021 and subsequent order by which penal provision in respect of which the cognizance has been taken has been amended i.e., order dated 08.07.2021, passed in the said case by the learned Chief Judicial Magistrate, Bokaro, be quashed and set aside.

14. Accordingly, the entire criminal proceeding including the F.I.R. in connection with Chas P.S. Case No. 194 of 2020 corresponding to G.R. Case No. 265 of 2021 and the order taking cognizance dated 27.02.2021 and subsequent order by which penal provision in respect of which the cognizance has been taken has been amended i.e., order dated 08.07.2021, passed in the said case by the learned Chief Judicial Magistrate, Bokaro, is quashed and set aside.

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

16. In view of disposal of this criminal miscellaneous petition, the interim relief granted earlier vide order dated 15.09.2021 is vacated.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 11th December, 2024
AFR/Sonu-Gunjan/-