IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 961 of 2024

Pitabasa Mishra, aged about 66 years, son of Late Baidyanath Mishra, resident of A/8, commercial Estate,, civil township, Bhesej Patel Road, Panaposh, P.O.- Panaposh, P.S. Raghunathpali, district- Rourkela, state- Orissa. ..... Petitioner

Versus

1. The State of Jharkhand
2. Avijit Adharjee, Son of Late Gourango Adharjee, resident of flat no. 55 G, 5th floor, 7th phase, Adarsh Nagar, P.O. & P.S. - Sonari, town Jamshedpur, District- East Singhbhum ….. Opposite Parties

For the Petitioner : Mr. Jitendra Shankar Singh, Adv.
For the State : Ms. Priya Shrestha, Spl. PP
For the O.P.No. 2 : Mr. A.K.Sahani, Adv.

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 482 of CrPC with the prayer for quashing and setting aside the entire criminal proceeding as well as the order dated 20.04.2018 in connection with Protest-cum- Complaint Case no. 1007 of 2016 whereby and where under, learned Magistrate, found the sufficient ground to proceed against the petitioner for having committed the offences punishable under Sections 406 and 422 of the IPC.

3. The allegation against the petitioner is that the petitioner is an Editor of a newspaper. The complainant-informant was an employee of the petitioner from 21.04.2012 to 28.08.2013 and it was agreed between the parties, that the complainant will work for 16 month and he was paid Rs. 2,80,000/- . The petitioner was having a flat and he allowed the complainant to reside in his flat with the promise that he can reside there till the remaining

amount of the complainant is paid to the complainant but the petitioner thereafter, gave the said flat to another man. The complainant lodged written report on the basis of which, Sonari P.S. case no. 138 of 2014 was registered but the police did not send up the petitioner for trial and submitted Final Report on the ground that the dispute is of civil nature. The complainant filed Protest cum Complaint Petition and on the basis of the same as well as the statement of the complainant on Solemn Affirmation and the statement of the inquiry witnesses, learned Judicial Magistrate First Class, Jamshedpur has passed the said impugned order.

4. It is submitted by the learned counsel for the petitioner that so far as the offence punishable under Section 406 of IPC is concerned, the essential ingredients to constitute the offence punishable under Section 406 of IPC are –

   (i) There must be entrustment and;

   (ii) there must be misappropriation or conversion to one's own use or use in violation of the legal direction or of any legal contract;

   as has been reiterated by the Hon'ble Supreme Court of India in the case of **Ram Narayan Popli vs. Central Bureau Of Investigation** reported in **2003 3 SCC 641**.

5. It is next submitted that in this case, there is absolutely no allegation of any entrustment of property to petitioner by the complainant and in the absence of same, the question of dishonest mis-appropriation of the property by the petitioner does not arise, Hence it is submitted that the often punishable intersection 406 of IPC is not made out.

6. So far as the offence punishable under Section 422 of IPC is concerned, it is submitted by learned counsel for the petitioner that the offence punishable under Section 422 of IPC will be made out if and only if, the accused prevents the debt or demand due to himself from being available for creditors. It is next submitted that there is no allegation against the petitioner of preventing any debt

from being available to the creditors and in the absence of the same, even if the entire allegations against the petitioner are considered to be true in its entirety still the offence punishable under Section 422 of IPC is not made out, hence, it is submitted that the prayer as made in this criminal miscellaneous petition be allowed.

7. Learned Spl. PP and learned counsel for the Opp. Party no. 2 on the other hand vehemently oppose the prayer of the petitioner and submits that the materials in the record is sufficient to constitute the offence punishable under Sections 406 of IPC and Section 422 of IPC hence, learned Judicial Magistrate has not committed any illegality in finding sufficient materials to proceed against the petitioner for having committed said offences, hence, this Criminal Miscellaneous Petition being without any merit, be dismissed.

8. Having heard the submissions made at the Bar and after going through materials available in the record, so far as the offence punishable under Section 406 of IPC is concerned, the essential ingredient to constitute the said offence, is that there must be entrustment and dishonest misappropriation of the entrusted property.

9. Now coming to the facts of the case, there is absolutely no allegation against the petitioner that the complainant entrusted any property to the petitioner and in absence of the same, the question of dishonest misappropriation does not arise. Accordingly, this Court is of the considered view that even if the entire allegations made against the petitioner are considered to be true in its entirety still offence punishable under Section 406 of IPC is not made out.

10. So far as the offence punishable under Section 422 of IPC is concerned, the essential ingredients to constitute the said offence are:-

(i) there was a debt or demand,

(ii) such debt or demand was due do the accused or some other person,

(iii) The accused prevented the debt or demand due to him or any other person from being available for creditors,

(iv) The accused did so dishonestly or fraudulently.

11. The plain reading of Section 422 of IPC makes it abundantly clear that this Section has no application unless the prevention debt complained of, is accompanied by a dishonest or fraudulent intention.

12. Now coming to the facts of the case, the only allegation against the petitioner is that the petitioner allowed the complainant to reside in his own flat with the assurance that he can continue to stay in the said flat till his dues, as an employee, is paid and the further allegation is that subsequently, he gave his own flat to someone else. There is no allegation against the petitioner of preventing any debt or demand due to himself or to any person from being made available according to the law for payment of his debt. The allegations against the petitioner, even if are considered to be true in their entirety, then the same makes out a case of permissive possession of the house of the petitioner to the informant and subsequently rescinding the permission. This by no stretch of imagination, can amount to prevent the debt or demand due to the petitioner from being available to the creditors; because still the complainant can enforce his right, if any, of realizing the demand, if any, to which he is entitled by the due process of law. Hence, this Court is of the considered view that even if the entire allegations made against the petitioner are considered to be true in its entirety still the offence punishable under Section 422 of IPC is not made out. Therefore, continuation of this criminal proceeding against the petitioner will amount to abuse of process of law. Accordingly, this is a fit case where the entire criminal proceeding as well as the order dated 20.04.2018 in connection with Protest-cum- Complaint Case no. 1007 of 2016 be quashed and set aside against the petitioner.

13. As a sequel to the discussions made above, the entire criminal proceeding as well as the order dated 20.04.2018 in connection

with Protest-cum- Complaint Case no. 1007 of 2016 is quashed and set aside qua the petitioner.

14. In the result, this Criminal Miscellaneous Petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated, the 16th December, 2025
Smita / AFR

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