IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 4306 of 2022

1. Hasib Khan, aged about 85 years, son of late Hafiz Khan, resident of Village-Gajwa, P.O.-Gajwa, P.S.-Pratappur, Dist.-Chatra
2. Abhishek Kumar Singh, aged about 38 years, son of Ajay Kumar Singh
3. Ajay Kumar Singh @ Ajay Singh, aged about 55 years, son of late Tulsi Singh
4. Ganouri Mistiry @ Ganauri Mistiri, aged about 60 years, son of late Jungi Mistiri
5. Vijay Kumar Singh @ Vijay Singh, aged about 54 years, son of late Tulsi Singh
6. Kumar Santosh Singh @ Santosh Kumar Singh, aged about 65 years, son of late Kumar Sita Ram Singh
7. Santu Singh, aged about 55 years, son of late Yadunandan Singh

All are resident of Village-Gerua, P.O.-Gerua, P.S.-Pratappur, Dist.-Chatra

.... Petitioners

Versus

1. The State of Jharkhand
2. Kailash Singh, aged about 71 years, son of late Yamuna Singh, resident of Village-Gerua, P.O.-Gerua, P.S.-Pratappur, Dist.-Chatra

…. Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

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For the Petitioners	: Mr. Mahesh Tewari, Advocate
	: Mr. Vikram Singh, Advocate
For the State	: Mr. Rakesh Ranjan, Addl. P.P.
For O.P. No.2	: Mr. Vijay Kr. Sharma, Advocate
	: Ms. Kumari Poonam Verma, Advocate

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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 of Cr.P.C. with the prayer to quash the entire criminal proceeding including the order dated 18.08.2022 passed by the learned Sub Divisional Judicial Magistrate, Chatra in Complaint Case No. 562 of 2018 wherein, the learned Sub Divisional Judicial Magistrate, Chatra has found *prima facie* case for the offences punishable under Sections 323, 341 and 427/34 of the Indian Penal Code and passed summoning orders *inter alia* against the petitioners.

3. The brief fact of the case is that on 08.02.2018 at about 11:00 am the petitioners being armed with rifles, guns, fishing nets, sacks and *lathi/danda* attempted to murder the complainant and his associates by firing upon them from rifles. This occurred when the complainant and his associates protested against the petitioners from taking the fish which was reared by the complainant and his associates; by putting hatchlings in the check dam belonging to the forest department, situated at the place named as Gerua. The complainant and his associates i.e. the villagers reared the fish in the pond on the oral permission of the D.F.O. concerned on behalf of the villagers, with the arrangement that they will take the fish from the said pond but the petitioners committed theft of five quintals of fish worth Rs.70,000-75,000/-.

4. On the basis of the complaint, statement of the complainant on solemn affirmation and the statement of the inquiry witnesses, the

learned Sub Divisional Judicial Magistrate, Chatra has found *prima facie* case for the offences punishable under Sections 323, 341 and 427/34 of the Indian Penal Code and passed summoning order.

5. It is submitted by the learned counsel for the petitioners by relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Lalankumar Singh & Ors. vs. State of Maharashtra** dated 11.10.2022 passed in Criminal Appeal No. 1757 of 2022 that therein, the Hon'ble Supreme Court of India has held that order of issuance of process is not an empty formality and the Magistrate is required to apply his judicial mind, as to whether sufficient ground for proceeding exists in the case or not and the formation of such an opinion is required to be stated in the order itself and that the order is liable to be set aside, if no reasons are given therein, while coming to the conclusion that there is a *prima facie* case against the accused but the order need not contain detailed reasons and submits that in this case, the learned Magistrate has failed to give reasons while coming to the conclusion that there is *prima facie* case against the petitioners and even ordered issue of the process against the eldest son of Hasib Khan without naming him.

6. Learned counsel for the petitioners next relied upon the judgment of the Hon'ble Supreme Court of India in the case of **State of Andhra Pradesh vs. M. Madhusudan Rao** dated 24.10.2008 in S.L.P. (Criminal) No. 3426 of 2007 wherein, the

Hon'ble Supreme Court of India has observed that the delay in lodging of the First Information Report not only gets bereft of the advantage of spontaneity, the danger of the introduction of coloured version, exaggerated account of the incident or a concocted story; as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity and submits that the complaint having been filed more than three and half months after the occurrence, the same is liable to be quashed.

7. Learned counsel for the petitioners also relied upon the judgment of the Hon'ble Supreme Court of India in the case of **M/s GHCL Employees Stock Option Trust vs. M/s India Infoline Limited** dated 22.03.2013 passed in Criminal Appeal No. 488 of 2013 and submits that therein, the Hon'ble Supreme Court of India has deprecated the conduct of the Magistrate wherein, the learned Magistrate without adverting as to whether the allegations in complaint *prima facie* makes out an offence charged for and in the mechanical manner issued process against all the accused persons.

8. Learned counsel for the petitioners next relied upon the judgment of this Court in the case of **Amresh Kumar Dhiraj & Ors. vs. State of Jharkhand & Anr.** reported in **2019:JHHC:36581** and submits that in that case, the coordinate Bench of this Court has held that order taking cognizance under Section 190 Cr.P.C. and the order issuing process under Section 204 Cr.P.C. can very well a composite order but the application of mind must be

reflected in the order itself and the order should not be mechanical and the Magistrate has to mention at least that there are sufficient materials to proceed against the persons and what are the *prima facie* materials to proceed against them but he need not mention detail reasons, as to why he is taking cognizance or issuing process but at least what are the bare minimum *prima facie* materials against the accused should be mentioned in the order issuing summon. It is then submitted by the learned counsel for the petitioners that in this case, the learned Magistrate has failed to mention what are the *prima facie* materials to proceed against the petitioners. It is further submitted by the learned counsel for the petitioners that the present case is the counter blast case of Pratapur P.S. Case No. 15 of 2018, which was lodged prior to institution of the complaint; on behalf of the petitioners. It is next submitted by the learned counsel for the petitioners that the petitioner no.1 is the original owner of plot no. 69, khata no. 314 whereupon the check dam is situated. It is further submitted by the learned counsel for the petitioners that the allegations against the petitioners are all false. Hence, it is submitted that the prayer as made in this criminal miscellaneous petition be allowed.

9. The learned Addl. P.P. and the learned counsel for the opposite party no.2 on the other hand vehemently oppose the prayer. It is submitted by the learned counsel for the opposite party no.2 by drawing attention of this Court to the information provided by the Public Information Officer cum Assistant Conservator of Forest,

Chatra North Forest Division under the provisions of Right to Information Act , that therein it has been intimated to the complainant that the place of occurrence being the check dam is a forest land and is situated inside the forest land; so it is false to say that the petitioners are the owners of the land and at best it can be a defence of the petitioners to claim that they are the owners of the land; which can be the subject matter of the trial. It is then submitted that the veracity or otherwise of the contradictory statements made by the petitioners and the complainant, cannot be adjudicated by this Court in exercise of the power under Section 482 Cr.P.C. It is further submitted by the learned Addl. P.P. and the learned counsel for the opposite party no.2 that the judgement relied upon by the petitioners, as mentioned above are well settled principles of law but the same are not applicable to the facts of this case because of the reason that in this case the learned Magistrate has elaborately discussed the materials basing upon which it has arrived at the conclusion that there is *prima facie* case for the offences made out against the petitioners. It is then submitted by the learned Addl. P.P. and the learned counsel for the opposite party no.2 that besides the said offence, the petitioners have also committed the offences punishable under Sections 379 and 307 of the Indian Penal Code and the opposite party reserves their right to agitate the same at the time of consideration of the framing of charge by the learned trial court. It is next submitted by the learned Addl. P.P. and the learned

counsel for the opposite party no.2 that it is a settled principle of law that case and counter case can go together therefore, there is no illegality in the order of the leaned Magistrate having taken cognizance of the offences after finding the materials in the record to be sufficient to constitute the offences. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

10. 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 is required to apply its judicial mind as to whether sufficient ground for proceeding exists in the case or not and the formation of such an opinion is required to be stated in the order itself but the order need not contain detail reasons.

11. Now coming to the facts of the case, it is the admitted case of the petitioners as has been admitted in paragraph no.7 of this criminal miscellaneous petition that Complaint Case No. 562 of 2018 is a counter blast case of Pratappur P.S. Case No. 15 of 2018.

12. It is a settled principle of law as has been reiterated by the Hon'ble Supreme Court of India in the case of **T.T. Antony vs. State of Kerela & Ors.** reported in **(2001) 6 SCC 181** that case and counter case can go together.

13. True it is that the delay in lodging of the FIR results in the FIR losing its spontaneity but it is also a settled principle of law that if the delay in lodging of the FIR is explained suitably, the delay in

lodging of the FIR will not be fatal and it is also a settled principle of law that solely for the reason that there is delay in lodging of the FIR, the entire criminal proceeding is not to be quashed.

14. Now coming to the facts of the case, firstly this is not the FIR rather it is a complaint case. The complainant in the complaint case has in categorical terms as well as in the statement under solemn affirmation has mentioned that he first went to the police station but as police sat over the matter for a considerable period of time in the name of investigation and as after considerable delay the police told the complainant to approach the Court, the same resulted in delay in institution of the complaint case.

15. Under such circumstances, since the delay has been explained, this Court is of the considered view that the delay in lodging of the FIR in the facts of this case is not a ground solely basing upon which the entire criminal proceeding can be quashed.

16. 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 Madhya Pradesh vs. Awadh Kishore Gupta & Ors.** reported in **2004 2 Supreme 501** that the defence of the accused person and the veracity of the evidence put forth by the accused, cannot be considered in exercise of jurisdiction under Section 482 Cr.P.C. by the High Court, as that would be job of the trial court.

17. It is also a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **Uttar Pradesh & Anr. vs. Akhil Sharda & Ors.** reported in **2022 Live Law SC 594**

wherein the Hon'ble Supreme Court of India reiterated the settled principle of law that no mini trial can be conducted by the High Court in exercise of power under Section 482 Cr.P.C, the relevant portion of which reads as under :-

> *"Having gone through the impugned judgment and order passed by the High court has set aside the criminal proceedings in exercise of powers under Section 482 CrPC, it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482CrPC. As observed and held by this court in a catena of decisions, no mini trial can be conducted by the High Court in exercise of power under Section 482CrPC, jurisdiction and at the stage of deciding the application under Section 482CrPC, the High Court cannot get into appreciation of evidence of the particular case being considering. (Emphasis supplied)*

18. Now coming to the facts of the case, the contention of the petitioners that he is the owner of the land from which he took the fish, the ownership and possession of which is also claimed by the complainant; is a defence of the petitioners, which can be adjudicated by the court concerned during the trial but certainly, when the opposite party no.2-complainant is also producing documents to the effect that the same does not belong to the petitioners, this Court is of the considered view that the same be left open to be adjudicated by the Magistrate during the trial of the case.

19. Considering the aforesaid facts, this Court is of the considered view that this is not a fit case where the entire criminal proceeding including the order dated 18.08.2022 passed by the learned Sub Divisional Judicial Magistrate, Chatra in Complaint Case No. 562

of 2018 is to be quashed in exercise of the power under Section 482 of the Code of Criminal Procedure.

20. Accordingly, this criminal miscellaneous petition being without any merit is dismissed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 18th December, 2025
AFR/Sonu-Gunjan/-

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