IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.2096 of 2023

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1. Suman Kumar, aged about 29 years, Son of Subodh Singh, Resident of Chandwara, P.O. + P.S.- Kharsari, District-Jamui (Bihar).
2. Danish Iqubal @ Danish Iqbal, aged about 31 years, Son of Kalim Akhtar Khan, Resident of Falah Colony, Road No. 5, P.O.- Pugmil, P.S. and District- Hazaribagh.
3. Surendra Ram, aged about 40 years, Son of Bishundev Ram, Resident of Village- Dildili, P.O.- Kajrukhurd, P.S. Pandu, District- Palamau.
4. Sitaram Ravidas, aged about 48 years, Son of Mukund Ravidas, Resident of Village + P.O.- Lalpur, P.S.- Lakarkhawari, District- Dhanbad.

… Petitioners

Versus

1. The State of Jharkhand
2. Sweety Chaurasiya @ Sweety Chourasia, w/o Dilip Kumar Chaurasia @ Dilip Prasad Chourasia, resident of Kumhar Patti, near Shani Mandir, P.S.- Dhansar, P.O. & District- Dhanbad.

… Opposite Parties.

For the Petitioners : Mr. Jitendra Shankar Singh, Sr. Advocate.
Ms. Shabina Perween, Advocate.
Mr. Sumitra Kumar, Advocate.
For the State : Mrs. Priya Shrestha, Spl.P.P.
For the O.P. No.2 : Mr. Afaque Rashidi, Advocate.
Ms. Aulia Begum, Advocate.

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- **I.A. No.12134 of 2026**

Heard the parties.

Learned senior counsel for the petitioners submits that this interlocutory application has been filed for early hearing of this Criminal Miscellaneous Petition.

Since this criminal miscellaneous petition is taken up today, this interlocutory application is disposed of being infructuous.

(Anil Kumar Choudhary, J.)

Cr.M.P. No.2096 of 2023

Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 482 of the Cr.P.C. with the prayer to quash the entire criminal proceeding including the order dated 18.05.2023 passed by the Judicial Magistrate, 1st Class, Dhanbad in C.P. Case No. 729 of 2022 whereby and whereunder learned Judicial Magistrate, 1st Class has found *prima facie* case for the offences punishable under Section 323, 341, 365, 354/34 of the Indian Penal Code and passed the summoning orders against the petitioners.

3. The brief fact of the case is that opposite party no.2-complainant filed complaint being C.P. Case No. 729 of 2022 in the Court of learned Judicial Magistrate, 1st Class, Dhanbad. The learned Judicial Magistrate was of the opinion that since the occurrence took place during the course of discharge of official duties of the petitioners; who are the police personnel hence, sanction for prosecution is required to take cognizance of the offences against them. Hence, he directed the complainant to make available the sanction for prosecution of the petitioner from the competent authority. Thereafter, the complainant filed a petition that no sanction of prosecution is required as one of the offences involved is punishable under Section 354 of the Indian Penal Code and vide order dated 05.09.2022 in Complaint Case No. 729 of 2022, the learned Judicial Magistrate, 1st Class Dhanbad rejected the said petition after holding that there is no evidence in the record to constitute the offence punishable under Section 354 of the Indian Penal Code; in absence of any allegation

of outraging modesty or kidnapping and only there is evidence of beating. Hence, there is necessity for sanction for prosecution, for the purpose of taking cognizance.

4. Being aggrieved by the said order dated 05.09.2022 passed in Complaint Case No. 729 of 2022, the opposite party no.2 herein, who was the complainant of the said complaint case, filed Criminal Revision No. 174 of 2022. The learned Additional Sessions Judge, III, Dhanbad being oblivious of the notification dated 16.05.1980 issued by the State of the Bihar which extends the protection of Section 197 (2) of the Code of Criminal Procedure to all the members of Police Force including both the Officers and men, was of the view; on the basis of a judgment of the Hon'ble Madras High Court that since for the removal of the constable, head-constable and inspector of the police, no prior sanction order of the State Government is required and they can be removed by the order of Inspector General of Police, so no sanction for prosecution is required for the purpose of taking cognizance against them; as the petitioners herein are either Officer-In-Charge, Sub-Inspector of Police, Constable and Havildar and set aside the said order dated 05.09.2022 passed in Complaint Case No. 729 of 2022 and directed to pass a fresh order for issuance of the process.

5. Consequent upon the said order being passed by the learned Additional Sessions Judge, III, Dhanbad in Criminal Revision No. 174 of 2022, the learned Judicial Magistrate, 1st Class, Dhanbad passed order dated 18.05.2023 in C.P. Case No. 729 of 2022 finding *prima facie* case and summoning the petitioners.

6. It is submitted by the learned senior counsel for the petitioners relying upon the judgment of the Hon'ble Supreme Court of India in the case of ***Om Prakash & Others versus State of Jharkhand through the Secretary, Department of Home, Ranchi 1 & Another*** with allied cases reported in ***(2012) 12 SCC 72*** para 9 of which reads as under:-

> *"9. Before we deal with the rival contentions, it is necessary to state one admitted fact which leads us to conclude that the reason given by the High Court for not quashing proceedings against appellant Om Prakash and others, namely, that no notification under Section 197(3) of the Code was produced by them protecting them from prosecution in respect of any offence alleged to have been committed while acting or purporting to act in discharge of their official duties, is incorrect. We have been shown a copy of the Notification dated 16-5-1980 issued by the State of Bihar which extends the protection of sub-section (2) of Section 197 of the Code to all the members of the police force as it includes both officers and men. Mr Gonsalves, learned Senior Counsel for the complainant has not disputed this position. It is, therefore, not necessary to dilate further on this issue." (Emphasis supplied)*

that therein the Hon'ble Supreme Court of India has taken cognizance of the notification dated 16.05.1980 issued by the State of Bihar; which extends the protection of Section 197 (2) of the Code of Criminal Procedure to all the members of Police Force including both the officers and men. So, it is submitted that order dated 28.02.2023 passed by the learned Additional Sessions Judge-III, Dhanbad in Criminal Revision 174 of 2022 is not sustainable in law; as the said order has been passed without taking into consideration, the said notification dated 16.05.1980 and consequently, the subsequent order dated 18.05.2023 passed in C.P. Case No. 729 of 2022 is also not sustainable in law. Therefore, the same be quashed and set aside. It is fairly submitted by the learned senior counsel

for the petitioners that the petitioners are not aggrieved by the order dated 05.09.2022 passed in C.P. Case No. 729 of 2022. Hence, it is submitted that the prayer as prayed for in this Cr.M.P. be allowed.

7. The learned Special Public Prosecutor and learned counsel for the opposite party no.2 fairly submits that it appears that the learned Additional Sessions Judge-III, Dhanbad was ignorant about the notification dated 16.05.1980 and because of that the order was passed.

8. Having heard the submissions made at the Bar and after carefully going through the materials available in the record, this Court is of the considered view that in view of the notification dated 16.05.1980 issued by the State of Bihar which extends the protection of Section 197(2) of the Code of Criminal Procedure to all the members of the police force including officers and men; which is also applicable to the officers and men of police in the state of Jharkhand also, in view of the provisions of the Bihar Reorganisation Act. Therefore this Court has no hesitation in holding that the order dated 28.02.2023 passed by the learned Additional Sessions Judge-III, Dhanbad in Criminal Revision No. 174 of 2022 whereby the learned Additional Sessions Judge-III, Dhanbad has set aside the order dated 05.09.2022 passed by the learned Judicial Magistrate, 1st Class, Dhanbad in C.P. Case No. 729 of 2022 on the ground that the petitioners being either Officer-In-Charge or Sub-Inspector or Constable or Havildar are removable from service by the order of Inspector General of Police and not by the State Government, is not sustainable in law. Accordingly, the order dated 28.02.2023 passed in Criminal Revision No. 174 of 2022 dated 28.02.2023 is quashed and set aside.

9. As the order dated 18.05.2023 passed in C.P. Case No. 729 of 2022 and all the subsequent orders were passed basing upon the order dated 28.02.2023 passed in Criminal Revision No. 174 of 2022; consequent upon setting aside of the said order dated 28.02.2023, all the order passed thereafter by the learned Judicial Magistrate-1st Class, Dhanbad in C.P. Case No. 729 of 2022 from 18.05.2023 onwards are also quashed and set aside.

10. The learned Judicial Magistrate, 1st Class, Dhanbad is directed to proceed with the case from the order dated 05.09.2022 onwards in the said Complaint Case No. 729 of 2022.

11. Accordingly, this Criminal Miscellaneous Petition is **allowed** to the aforesaid extent only.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 02nd September, 2026
AFR/ Amar

Uploaded on- 07/09/2026