

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 565 of 2021

1. Binoy Kumar Jha @ Binay Kr. Jha, aged 56 years, S/o Nitya Nand Jha, R/o Village House No.87, Ward No.02, P.O. & P.S. Pathrol, Dist. Deoghar
2. Vikash Kumar Jha @ Bikash Kr. Jha, aged 25 years, S/o Bameshwar Nath Jha, R/o Village Lakhibazaar, Jamini, P.O. & P.S. Pathrol, Dist. Deoghar
3. Bameshwar Nath Jha, aged 50 years, S/o Harendra Nath Jha, R/o House No.86, Ward No.02, near durga mandir, P.O. & P.S. Pathrol, District- Deoghar
4. Nalini Kumar Jha @ Nalini Jha, aged 44 years, S/o Shivnath Kumar Jha, R/o village- Lakhi Bazaar, P.O. & P.S. Pathrol, District- Deoghar
5. Ashutosh Kumar Jha @ Asutosh Kr. Jha, aged 42 years, S/o Shivnath Kumar Jha, R/o House No.86, Ward No.02, P.O. & P.S. Pathrol, District- Deoghar
6. Rajeev Kumar Jha @ Rajiv Kr. Jha, aged 35 years, S/o Shivnath Kumar Jha, R/o House No.86, Ward No.02, P.O. & P.S. Pathrol, District- Deoghar
7. Shivnath Jha, aged 67 years, S/o Harendra Nath Jha, House No.86, Ward No.02, P.O. & P.S. Pathrol, District- Deoghar
8. Abhay Kumar Jha, aged 29 years, Binoy Kumar Jha, R/o Ward No.02, P.O. & P.S. Pathrol, District- Deoghar
9. Ajay Kumar Jha, aged 32 years, S/o Binoy Kumar Jha, R/o village Jamuni, P.O. & P.S. Pathrol, District- Deoghar ... **Petitioners**

-Versus-

The State of Jharkhand

... **Opposite Party**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners : Mr. Nitish Bhardwaj, Advocate
For the Opposite Party-State : Mr. Shailendra Kumar Tiwari, Spl.P.P.

05/27.10.2021. Heard Mr. Nitish Bhardwaj, learned counsel for the petitioners and Mr. Shailendra Kumar Tiwari, learned Spl.P.P appearing for the opposite party-State.

2. This petition has been taken through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. The petitioners have filed this petition for quashing the order taking cognizance dated 14.09.2020 passed by the learned S.D.J.M., Madhupur in connection with Pathrol P.S. Case No.56/2019.

4. The prosecution story in the FIR is that the complaint petition being Complaint Case No.163/2019 was filed by the complainant namely Godawari Devi, which was sent under Section 156(3) Cr.P.C. for institution of FIR and accordingly the present FIR has been lodged alleging therein that on 14.05.2019, all the accused persons were making drainage and the complainant was also doing the same and all the accused gathered there and started abusing the complainant and for that complainant's son informed the O/c of Pathrol Police Station. On 14.05.2019 at 04:00 p.m., accused namely Abhay Kumar Jha clutched the complainant by her hair and dragged her to the road, where all the accused persons torn her dress and Abhay Kumar Jha forcefully opened her mouth and pour the stool into her mouth with statement that the complainant is a witch. It was further alleged that all the accused snatched a silver chain of 5 grams worth Rs.4,000/- and a payal of silver of 8 grams worth Rs.6,500/- and also alleged that the complainant is a witch who use to kill children and cattle.

5. Learned counsel for the petitioners submits that the matter was investigated by the police and after investigation the police has not sent up the petitioner for trial and submitted final report in favour of the petitioners showing their name in column 12 of the final report bearing Final Report No.20/2019 dated 31.12.2019 showing that offences non-cognizable. After submission of final report in favour of the petitioners, the learned Magistrate has taken cognizance against the petitioners under Sections 323/504/34 of IPC vide order dated 14.09.2020 although the Investigating Officer after

investigation not sent up for trial to these petitioners. He further submits that the learned Magistrate has taken cognizance against the petitioners in a mechanical manner and without assigning any reason as to why he is differing from the opinion of the Investigating Officer, who after investigation not sent up these petitioners for trial. He also submits that the learned Magistrate has power to differ from the opinion of the Investigating Officer, but in that condition he has to assign reason as to why he is differing from the opinion of the Investigating Officer.

6. Learned Spl.P.P. appearing on behalf of the opposite party-State submits that there is no illegality in the impugned order. He further submits that it is well within the domain of the Magistrate to proceed further if he comes to a conclusion that there is *prima facie* case to proceed against the petitioners.

7. In view of the above facts, the Court has examined the F.I.R as well as complaint petition. The police after investigation the police has not sent up the petitioners for trial and submitted the final report in favour of the petitioners.

8. In the judgment rendered in the case of ***Prathvi Raj Chauhan v. Union of India and Others*** reported in **(2020) 4 SCC 727**, it has been held that the proceeding can be quashed under section 482 of the Code and it is held in paragraph no.12 of the said judgment, which is quoted herein below :

"12. The Court can, in exceptional cases, exercise power under Section 482 CrPC for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised."

9. The law is well settled with regard to material under section 202 Cr.P.C which has been considered by the Hon'ble Supreme Court in the case of ***Swaraj Thackeray v. State of Jharkhand and Ors*** reported in **(2008) CriLJ 3780**. Paragraph no.7 of the said judgment is quoted herein below:

"7. From the impugned order, I find that the learned Magistrate after considering the allegations made in the complaint petition and the materials adduced during enquiry under Section 202, Cr.P.C found prima-facie case made out for commission of the offence under section 153-A, 153-B and 504 of the Indian Penal Code against the petitioner Swaraj Thackeray @ Raj Thakeray and, thereafter directed the complainant to file requisite for issuance of process. At the stage of taking cognizance a detailed order discussing the evidence in detail is not required to be passed by the Magistrate. The order taking cognizance but should show that the Magistrate has applied his mind before taking cognizance and from the impugned order it appears that the Magistrate after applying his mind has taken cognizance and, therefore, it cannot be said that the impugned order suffers from non-application of mind."

10. Subsequently, the Hon'ble Supreme Court has held in the case of **Dy. Chief Controller of Imports and Exports v. Roshanlal Agarwal and Others** reported in **(2003) 4 SCC 139** at paragraph no.9, which is quoted below :

"9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. This question was considered recently in U.P. Pollution Control Board v. Mohan Meakins Ltd. and after noticing the law laid down in Kanti Bhadra Shah v. State of W.B. it was held as follows: (SCC p. 749, para 6)"

The legislature has stressed the need to record reasons in certain situations such as dismissal of a

complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order."

11. It is well settled that no detailed order is required for passing any order for summoning the accused but in a case where Final Report has already been submitted in favour of the accused and the Magistrate is intending to proceed on a complaint petition, he is required to make reasons of differing with the Final Report, which has not been done in the case in hand. Putting the criminal proceeding in motion is a serious thing as held in the case of **Pepsi Foods Ltd. and Others v. Special Judicial Magistrate and Others**, reported in **(1998) 5 SCC 749** in which the Hon'ble Supreme Court has held that to set criminal proceeding in motion is a serious matter, which requires to be looked into minutely.

12. Accordingly, the order taking cognizance dated 14.09.2020 passed by the learned S.D.J.M., Madhupur in connection with Pathrol P.S. Case No.56/2019 is hereby quashed.

13. This criminal miscellaneous petition is, therefore, allowed and disposed of.

(Sanjay Kumar Dwivedi, J.)

Ajay/