

Dharmil Anil Bodani vs The State Of Jharkhand on 19 February, 2025

Author: Anil Kumar Choudhary

Bench: Anil Kumar Choudhary

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (Cr.) No.1041 of 2024

1. Dharmil Anil Bodani, aged about 54 years, son of Anil Keshavlal Bodani, resident of 51, Elcid, Ridge Road, Malabar Hill, P.O. Malabar Hill, P.S. Malabar Hill, District Mumbai 400006 (Maharashtra).

2. Shyamal Anil Bodani, aged about 44 years, son of Anil Keshavlal Bodani, resident of 51, Elcid, Ridge Road, Malabar Hill, P.O. Malabar Hill, P.S. Malabar Hill, District Mumbai 400006 (Maharashtra).

...

Petitioners

Versus

1. The State of Jharkhand

2. Dinesh Kumar, aged about 47 years, son of Ram Sharan Lal, resident of Near Sangat Rajoli, P.O. Rajoli, P.S. Rajoli, District Nawada (Bihar), Presently resident of Kailash Bhawan, Kokar Chowk, P.O. Lalpur, P.S. Sadar, Dist. Ranchi (Jharkhand) ... Respondents With

1. Parag Kishore Satoskar, aged about 51 years, son of Kishore G. Satoskar, resident of Building 6A Flat No.71, Kalpataru Estate, Jogeshwari Vikhroli Link Road, Majas Depot. Andheri East, P.O. Jogeshwari East, P.S. Jogeshwari, District Mumbai 400093 Maharashtra.

2. Rupesh Anchan, aged about 43 years, son of Mudde Anchan, resident of 301, L-3, Poonam Vihar, Shanti Nagar, Mira Road East, P.O. Mira Road, P.S. Shanti Nagar, District Thane - 401107 Maharashtra

3. Sunil Suresh Kurle, aged about 27 years, son of Gopal Kurle, resident of 288, Shivshatri Machimar Nagar, Captain Prakash Pehta Marg, Cuff Parad, Colaba, P.O. Colaba, P.S. Cuff Parad, District Mumbai, Maharashtra ... Petitioners 1 W.P.(Cr.) No.1041 of 2024 with W.P. (Cr.) No.1042 of 2024 Versus

1. The State of Jharkhand

2. Dinesh Kumar, son of Ram Sharan Lal, resident of near Sangat Rajoli, P.O. Rajoli, P.S. Rajoli, District Nawada (Bihar), currently resident at Kailash Bhawan, Kokar Chowk, P.O. Lalpur, P.S. Sadar, District Ranchi (Jharkhand) ... Respondents

For the Petitioners	: Mr. Indrajit Sinha, Advocate (Through Video Conferencing) Mr. Ajay Kr. Sah, Advocate
For the State	: Mr. Jai Prakash, AAG I A Mr. Amitesh, AC to AAG I A
For the Resp. No.2	: Mr. Dharendra Kr. Deo, Advocate Mr. Sumit Kumar, Advocate

PRESENT

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. Since both these Writ Petitions (Cr.) have been filed with the common prayer for issuing appropriate writ/order/direction for quashing of the First Information Report being Kotwali P.S. Case No.323 of 2024, hence, both these Writ Petitions (Cr.) are disposed of by this common judgment.

3. These Writ Petitions (Cr.), under Article 226 and Article 227 of the Constitution of India have been filed with the prayer for issuance of appropriate writ/order/direction for quashing of the First Information Report being Kotwali P.S. Case No.323 of 2024 registered for the offences punishable under Sections 316 (2), 318 (4) and 3 (5) of the Bharatiya Nyaya Sanhita, 2023 and consequential reliefs.

4. The brief fact of the case is that the petitioners on behalf of M/s Oriental Aromatics Limited, have cheated and thereby dishonestly induced the 2 W.P.(Cr.) No.1041 of 2024 with W.P. (Cr.) No.1042 of 2024 informant to part with Rs.73,00,000/- with promise to supply articles of the same amount but have supplied articles worth Rs.31,49,167/- only and thereby cheated the informant of Rs.41,50,833/-. On the basis of the written-application submitted by the informant, Kotwali P.S. Case No.323 of 2024 has been registered and police took up investigation of the case, which is going on at present.

5. Learned counsel for the petitioners submits that the dispute between the parties is purely a civil dispute and has been instituted as a counter-blast to the termination of the distribution agreement dated 01.04.2024. It is next submitted that as the company of the respondent No.2 failed to clear the outstanding dues of the said of M/s Oriental Aromatics Limited, hence, the same led to termination of the distribution agreement. It is next submitted that it is a settled principle of law that criminal law cannot be utilized as an instrument of vexation or operation to resolve a contractual dispute. In this respect, learned counsel for the petitioners relies upon the judgment of the Hon'ble Supreme

Court of India in the case of Indian Oil Corporation vs. NEPC India Ltd. & Others reported in (2006) 6 SCC 736. In this respect, learned counsel for the petitioners also relies upon the judgment of the Hon'ble Supreme Court of India in the cases of Inder Mohan Goswami vs. State of Uttaranchal & Others reported in (2007) 12 SCC 1, Uma Shankar Gopalika vs. State of Bihar & Another reported in (2005) 10 SCC 336 and G. Sagar Suri & Another vs. State of U.P. & Others reported in (2000) 2 SCC 636.

6. Learned counsel for the petitioners further relies upon the judgment of the Hon'ble Supreme Court of India in the case of Madhavrao Jiwajirao Scindia & Others vs. Sambhajirao Chandrojirao Angre & Others reported in 3 W.P.(Cr.) No.1041 of 2024 with W.P. (Cr.) No.1042 of 2024 (1988) 1 SCC 692 and submits that legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence.

7. Learned counsel for the petitioners relies upon the judgment of the Hon'ble Supreme Court of India in the case of S. K. Alagh vs. State of Uttar Pradesh & Others reported in (2008) 5 SCC 662 and submits that in the absence of any provision in any statute, a Director of a Company or an employee cannot be held to be vicariously liable for any offence committed by the Company itself. In this respect, learned counsel for the petitioners also relies upon the judgment of the Hon'ble Supreme Court of India in the case of GHCL Employees Stock Option Trust vs. India Infoline Limited reported in (2013) 4 SCC 505.

8. Learned counsel for the petitioners next submits that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution as has been observed by the Hon'ble Supreme Court of India in the case of State of Karnataka vs. L. Muniswamy & Others reported in (1977) 2 SCC 699.

9. On being asked by the Court, learned counsel for the petitioners fairly submits that the petitioners on behalf of M/s Oriental Aromatics Limited, have received Rs.73,00,000/- from the informant.

10. Learned counsels for the petitioners further relies upon the judgment of the Hon'ble Supreme Court of India in the case of Delhi Race Club (1940) Ltd. & Others vs. State of Uttar Pradesh & Another reported in 2024 SCC OnLine SC 2248 paragraphs-37 and 38 of which reads as under:-

4 W.P.(Cr.) No.1041 of 2024 with W.P. (Cr.) No.1042 of 2024 "37. Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.

38. In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405 IPC, punishable under Section 406 IPC, is committed by the accused,

then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415 IPC, punishable under Section 420 IPC."

(Emphasis supplied) and submits that offence punishable under Section 318 (4) of the Bharatiya Nyaya Sanhita, 2023 which corresponds to Section 420 of the Indian Penal Code and the offence punishable under Section 316 (2) of the Bharatiya Nyaya Sanhita, 2023 which corresponds to Section 406 of the Indian Penal Code, both cannot be made out, under the facts of the case.

11. Learned counsel for the petitioners next submits that the F.I.R. has been lodged with malafide and malice for wrecking vengeance and cause harms to the petitioners as well as to M/s Oriental Aromatics Limited, therefore, it is submitted that the prayer, as prayed for in these Writ Petitions (Cr.), be allowed.

12. Learned counsel for the respondent- State and the learned counsel for the respondent No.2 on the other hand vehemently oppose the prayer of the petitioners made in these Writ Petitions (Cr.). Learned counsel for the respondent- State and the learned counsel for the respondent No.2 next submit that there is direct and specific allegation against the petitioners of both these Writ Petitions (Cr.) of having cheated and thereby dishonestly induced the informant to pay Rs.73,00,000/- which fact has not been disputed anywhere in either of these two Writ Petitions (Cr.). It is further submitted that the 5 W.P.(Cr.) No.1041 of 2024 with W.P. (Cr.) No.1042 of 2024 undisputed fact remains that the petitioners have supplied articles worth Rs.31,49,167/-. It is next submitted as the petitioners have defrauded the informant to the tune of Rs.41,50,883/- and they were having the intention to deceive since the beginning of the transaction between the parties. Hence, the offence punishable under Section 318 (4) of the Bharatiya Nyaya Sanhita, 2023 is made out and additionally or in lieu of Section 316 (2) of the Bharatiya Nyaya Sanhita, 2023 which corresponds to Section 420 of the Indian Penal Code is made out or not, is a subject matter of investigation but certainly if either of the two offences is made out; the entire criminal proceedings including the F.I.R cannot be quashed at this nascent stage.

13. Learned counsel for the respondent- State and the learned counsel for the respondent No.2 further submit that though a notice under Section 35 (3) of the Bharatiya Nyaya Sanhita, 2023, has been served upon the petitioners but the petitioners knowing pretty well that they have no defence and they have committed the offence alleged, have not responded to the same nor appeared before the Investigating Officer of the case and instead have come to this Court for quashing the entire criminal proceedings; which prayer if allowed, will certainly absolve them of the offence committed by them. Hence, it is submitted that these Writ Petitions (Cr.), being without any merit, be dismissed.

14. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that it is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of Central Bureau of Investigation vs. 6 W.P.(Cr.) No.1041 of 2024 with W.P. (Cr.) No.1042 of 2024 Aryan Singh Etc. reported in 2023 SCC OnLine SC 379 paragraph-11 of which reads as under:-

"11. One another reason pointed by the High Court is that the initiation of the criminal proceedings/proceedings is malicious. At this stage, it is required to be noted that the investigation was handed over to the CBI pursuant to the directions issued by the High Court. That thereafter, on conclusion of the investigation, the accused persons have been chargesheeted. Therefore, the High Court has erred in observing at this stage that the initiation of the criminal proceedings/proceedings is malicious. Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial. In any case, at this stage, what is required to be considered is a prima facie case and the material collected during the course of the investigation, which warranted the accused to be tried." (Emphasis supplied) that whether the criminal proceedings was/were malicious or not, is not required to be considered at the initial stage. The same is required to be considered at the conclusion of the trial. Therefore, this Court has no hesitation in holding that keeping in view the nature of allegation made against the petitioners, the entire criminal proceedings cannot be quashed on the ground that the same is a malicious one at this nascent stage when just the F.I.R. has been registered and the investigation of the case is going on.

15. It is also a settled principle of law that for same set of allegations there may be a civil dispute and an offence punishable in law but merely because there is a civil remedy that is not a ground to quash the entire criminal proceedings, that too at the nascent stage when the F.I.R. has only been registered and the investigation of the case is going on.

16. So far as the contention of the petitioners that the Directors or the employees of the company is being prosecuted by lodging of this F.I.R. is concerned, it is a settled principle of law as has been reiterated by the Hon'ble Supreme Court of India in the case of Managing Director, Castrol India

7 W.P.(Cr.) No.1041 of 2024 with W.P. (Cr.) No.1042 of 2024 Limited vs. State of Karnataka & Another reported in (2018) 17 SCC 275 wherein it has been observed by the Hon'ble Supreme Court of India that clear and categorical statement in the complaint is required for fastening vicarious liability for the offence committed by the companies or a Director who is responsible or In-charge of conduct of business of the company.

17. Now, coming to the facts of the case, there is direct allegation against the petitioners of themselves having cheated and thereby dishonestly induced the informant to part with Rs.73,00,000/- from 04.04.2024 to 26.06.2024 as has been mentioned in detail in F.I.R. through the cheques. So, as there is direct allegation against the petitioners in their individual capacity of being involved in commission of offence punishable under Section 318 (4) of the Bharatiya Nyaya Sanhita, 2023, in the considered opinion of this Court the ratio of the judgment of the Hon'ble Supreme Court of India in the cases of S. K. Alagh vs. State of Uttar Pradesh & Others (supra) and GHCL Employees Stock Option Trust vs. India Infoline Limited (supra), is not applicable to the facts of this case.

18. 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 M.P. vs. Awadh Kishore Gupta & Others reported in (2004) 1 SCC 691 that High Court is not supposed to embark upon an inquiry as to whether the evidence is reliable or not at the time of quashing of an F.I.R. as that can be the function of a trial court. It is also a settled principle of law that a legitimate prosecution ought not to be stifled by exercising the power under Article 226 or Article 227 of the Constitution of India.

8 W.P.(Cr.) No.1041 of 2024 with W.P. (Cr.) No.1042 of 2024

19. In view of the discussions made above; as if the allegations made in the F.I.R. are considered to be true in their entirety, the offence punishable under Section 318 (4) of the Bharatiya Nyaya Sanhita, 2023 is made out in view of the undisputed fact that the petitioners induced the informant to pay INR 73 lakhs but could not produce any document to show supply of article in excess of Rs.31,49,167/- ; without any plausible reason. The said offence committed cannot be condoned by the subsequent termination of the distributorship of the informant. Whether or not in lieu of the offence punishable under Section 318 (4) of the Bharatiya Nyaya Sanhita, 2023 or in addition to that the offence punishable under Section 316 (2) of the Bharatiya Nyaya Sanhita, 2023 is also made out or neither of the offences, is true, is certainly a subject matter of investigation. Though registration of the F.I.R. is for two offences but as already discussed above at least one of the offence is made out if the allegations contained in the F.I.R. are considered to be true; therefore, this Court is of the considered view that this is not a fit case where the entire criminal proceedings including the F.I.R. of Kotwali P.S. Case No.323 of 2024 be quashed at this nascent stage when there is allegation against the petitioners of cheating of huge amount of money of several lakhs.

20. So far as the contention of the learned counsel for the petitioners for termination of the distributorship agreement is concerned, the allegation against the petitioners is that first the offence of cheating punishable under Section 318 (4) of the Bhartiya Nyaya Sanhita, 2023 was committed and subsequently the termination of the distributorship agreement, has illegally been made, so, the subsequent act of termination of the agreement cannot obliterate the offence of cheating committed by the petitioners. 9 W.P.(Cr.) No.1041 of 2024 with W.P. (Cr.) No.1042 of 2024

21. Hence, this Court is of the considered view that there is no merit in these Writ Petitions (Cr.).

22. Accordingly, both these Writ Petitions (Cr.), being without any merit, are dismissed.

23. In view of disposal of both these Writ Petitions (Cr.), the interim order granted in both these Writ Petitions (Cr.), is vacated.

24. Registry is directed to intimate the court concerned forthwith.

(Anil Kumar Choudhary, J.) High Court of Jharkhand, Ranchi Dated the 19th of February, 2025
AFR/ Animesh 10 W.P.(Cr.) No.1041 of 2024 with W.P. (Cr.) No.1042 of 2024