

Kajru Mahto @ Kajru Chaudhary @ Kajru ... vs The State Of Jharkhand ... Opposite ... on 21 November, 2024

Author: Anil Kumar Choudhary

Bench: Anil Kumar Choudhary

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.3193 of 2024

1. Kajru Mahto @ Kajru Chaudhary @ Kajru Choudhary @ Kajaru Mahto @ Kajaro Choudhary, aged about 65 years, son of Ganesh Thandar
2. Deo Kumar Choudhary @ Dev Kumar Mahto @ Dev Kumar Mahto @ Dev Kumar Choudhary, aged about 42 years, son of Kajru Mahto
3. Srikant Mahto @ Srikant Choudhary @ Satyanarayan Choudhary, aged about 37 years, son of Kajru Mahto All are residents of Ichatu, P.O. & P.S. Rajrappa, District Ramgarh ... Petitioners Versus The State of Jharkhand ... Opposite Party

For the Petitioners	: Mr. Pratik Sen, Advocate
For the State	: Mr. Subodh Kr. Dubey, Addl.P.P.

PRESENT

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 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 with a prayer to quash the order dated 16.08.2024 passed by the learned Additional Sessions Judge-I, Ramgarh in connection with S.T. No.15 of 2018 arising out of Rajrappa P.S. Case No.16 of 2017 corresponding to G.R. No.86 of 2017 by which the learned Additional Sessions Judge-I, Ramgarh has allowed the petition filed under Section 348 of the Bhartiya Nagarik Suraksha Sanhita, 2023 without giving any opportunity of being heard to the petitioners herein who are the accused persons of the said case, even though the learned counsel for the petitioners who received the copy of the petition, has made an endorsement on the petition itself, that the petitioners have objection to the contents of the said application filed under Section 348 of the Bhartiya Nagarik Suraksha Sanhita, 2023 as the evidence of the witness sought to be tendered is not germane, to the case.

3. Perusal of the record reveals that on 16.08.2024 no witness was present. A petition was filed on behalf of the prosecution under Section 348 of the Bhartiya Nagarik Suraksha Sanhita, 2023 and after hearing, the learned Additional Sessions Judge-I, Ramgarh, allowed the prayer of the prosecution, in the interest of justice to issue summons to Dr. C.B. Sahay, to be examined as prosecution witness, along with injury report of the victim of the case.

4. Learned counsel for the petitioners submits that the learned Additional Sessions Judge-I, Ramgarh has passed the impugned order hurriedly without giving any opportunity to the petitioners to put forth their written objection to the contents of the said petition and to put forth their case that the evidence of the said Dr. C.B. Sahay is not germane to the case. In support of its contention, the learned counsel for the petitioners relies upon the judgment of the Hon'ble Supreme Court of India in the case of Natasha Singh vs. Central Bureau of Investigation (State) reported in (2013) 5 SCC 741 as also the judgment of the Hon'ble Supreme Court of India in the case of Rajaram Prasad Yadav vs. State of Bihar & Another reported in (2013) 14 SCC 461.

5. Learned counsel for the petitioners next submits that the learned Additional Sessions Judge-I, Ramgarh has not recorded any satisfaction that the evidence of Dr. C.B. Sahay is essential to the just decision of the case even though the said Dr. C.B. Sahay was not present in the court when the prayer for tendering Dr. C.B. Sahay as a witnesses was allowed. Hence, it is submitted that the prayer, as prayed for in the instant Cr.M.P., be allowed.

6. Learned Addl.P.P. appearing for the State vehemently opposes the prayer of the petitioners made in the instant Cr.M.P. and submits that the learned Additional Sessions Judge-I, Ramgarh has mentioned in the impugned order itself that the prayer of the prosecution is allowed in the interest of justice obviously means that the examination of Dr. C.B. Sahay is essential for the just decision of the case and the fact that the learned Additional Sessions Judge-I, Ramgarh has mentioned that it heard the prosecution shows that there has been application of mind by the learned Additional Sessions Judge-I, Ramgarh. Therefore, it is submitted that this Cr.M.P., being without any merit, be dismissed.

7. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, the undisputed fact remains that the learned counsel for the petitioners who are the accused persons of the case, has received the copy of the petition filed under Section 348 of the Bhartiya Nagarik Suraksha Sanhita, 2023 with objection. It is apparent from the order dated 16.08.2024 that the learned Additional Sessions Judge-I, Ramgarh has not given any opportunity of being heard to the petitioners, who are the accused persons of the said case, to put forth their contention in respect of the said application dated 16.08.2024 filed under Section 348 of the Bhartiya Nagarik Suraksha Sanhita, 2023. It is needless to mention that in a criminal trial, the accused person must be given adequate opportunity to properly defend its case.

8. Under such circumstances, even though the accused persons wanted to put forth some objections in respect of the petition under Section 348 of the Bhartiya Nagarik Suraksha Sanhita, 2023 dated 16.08.2024 and which is apparent from the records of the case, the conduct of the learned Additional Sessions Judge-I, Ramgarh in not giving any opportunity of being heard to the

petitioners herein who are the accused persons of the said case, before allowing the said petition, in the considered opinion of this Court, is not sustainable in law. The learned Additional Sessions Judge-I, Ramgarh has also committed an error by not recording any satisfaction that the examination of the witness sought to be summoned is required for the just decision of the case, even though the said witness was not present in the court when such order was passed. The impugned order is bad, on this ground as well.

9. Accordingly, the order dated 16.08.2024 passed by the learned Additional Sessions Judge-I, Ramgarh in connection with S.T. No.15 of 2018 arising out of Rajrappa P.S. Case No.16 of 2017 corresponding to G.R. No.86 of 2017 is quashed and set aside.

10. The learned Additional Sessions Judge-I, Ramgarh is directed to pass a fresh order in respect of the said petition under Section 348 of the Bhartiya Nagarik Suraksha Sanhita, 2023 after giving an opportunity of being heard to the accused persons and by taking into consideration the written objection dated 17.09.2024, filed by the petitioners.

11. Accordingly, this Criminal Miscellaneous Petition stands allowed.

(Anil Kumar Choudhary, J.) High Court of Jharkhand, Ranchi Dated the 21st of November, 2024
AFR/ Animesh