

Somjeet Mallick

v.

State of Jharkhand & Others

(Criminal Appeal No. 4190 of 2024)

14 October 2024

[J.B. Pardiwala and Manoj Misra,* JJ.]

Issue for Consideration

Whether the High Court was justified in quashing the FIR, the cognizance order and the proceedings in pursuance thereof without considering the materials collected during investigation.

Headnotes[†]

Code of Criminal Procedure, 1973 – s.482 – Penal Code, 1860 – ss.406, 420 – Appellant alleged that as per agreement between the parties, the Truck/Trailor was rented to the accused-respondents for plying for 21 months at monthly rent but after payment of first month's rent, the rent was not paid despite assurances – Chargesheet filed and cognizance was taken by CJM while the application u/s.482, CrPC filed by respondents was pending before the High Court – High Court quashed the FIR, the cognizance order and the proceedings without considering the materials collected during investigation:

Held: At the stage of deciding whether a criminal proceeding or FIR is to be quashed at the threshold or not, the allegations in the FIR or the police report or the complaint, including the materials collected during investigation or inquiry are to be taken at their face value so as to determine whether a prima facie case for investigation or proceeding against the accused is made out – Correctness of the allegations is not to be tested at this stage – Mens rea, an essential ingredient to commit an offence is a question of fact to be inferred from the act in question as well as the surrounding circumstances and conduct of the accused – Thus, when the appellant alleged that the accused despite taking possession of the Truck on hire failed to pay hire charges for months together making false promises for its payment, a prima facie case, reflective of dishonest

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Digital Supreme Court Reports

intention on the part of the accused is made out also as regards whether the Truck had been dishonestly disposed of, making out a case of criminal breach of trust which requires investigation – A petition to quash the FIR does not become infructuous on submission of a chargesheet u/s.173 (2), CrPC, but when a chargesheet has been submitted, and if there is no stay on the investigation, the Court must apply its mind to the materials in the police report before quashing the FIR and consequential proceedings – More so, when the FIR alleges an act reflective of a dishonest conduct of the accused – Quashing of FIR at the very inception would thwart a legitimate investigation – Impugned order set aside – Quashing petition remitted to High Court to decide the same considering the materials collected during investigation. [Paras 16, 17, 19, 20, 22, 23]

Criminal Law – FIR – Quashing – FIR not to be quashed, if discloses cognizable offence:

Held: FIR not an encyclopedia of all imputations – To test whether an FIR discloses commission of a cognizable offence what is to be looked at is not any omission in the accusations but the gravamen of the accusations – At this stage, Court is not required to ascertain as to which specific offence has been committed – It is only at the time of framing charge, when materials collected during investigation are before the Court, that it has to draw an opinion as to for which offence the accused should be tried – Prior to that, if satisfied, the Court may discharge the accused – Thus, when the FIR alleges a dishonest conduct on the part of the accused which, if supported by materials, would disclose commission of a cognizable offence, investigation should not be thwarted by quashing the FIR. [Para 17]

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860.

List of Keywords

Quashing; Quashing petition; Cognizance order; Materials collected during investigation; Truck on hire; Hire charges; Truck rented; Dishonest intention; Mens rea question of fact; Cognizance; Chargesheet; Police report; FIR not encyclopedia; Criminal breach of trust.

Somjeet Mallick v. State of Jharkhand & Others**Case Arising From**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 4190 of 2024

From the Judgment and Order dated 01.02.2024 of the High court of Jharkhand at Ranchi in CRMP No. 3796 of 2018

Appearances for Parties

Konark Tyagi, Sagar Sarda, Advs. for the Appellant.

Rahul Shyam Bhandari, Ms. G. Priyadarshini, Satyam Pathak, Prabhakar Pahepuri, Dr. Ratneshwar Chakma, Vishnu Sharma, Ms. Madhusmita Bora, Shiv Ram Sharma, Pawan Kishore Singh, Dipankar Singh, Mrs. Anupama Sharma, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment**

Manoj Misra, J.

1. Leave Granted.
2. This appeal impugns judgment and order of the High Court¹ dated 01.02.2024 passed in Cr. M.P. No.3796 of 2018 whereby, exercising powers under Section 482 of the Code of Criminal Procedure, 1973,² the High Court quashed the order dated 20.02.2020, by which cognizance was taken, and all further proceedings in connection with Case No.78 of 2016, registered at P.S. Sakchi, corresponding to G.R. No.1627 of 2016, pending in the court of Chief Judicial Magistrate,³ Jamshedpur.

Factual Matrix

3. The appellant (original complainant) filed an application, under Section 156(3) CrPC, alleging that the second and third respondents (original accused) offered to take appellant's Truck (Trailer No. NL 01K 1250) on a monthly rent of Rs.33,000, exclusive of driver's/ helper's salary, for plying it between Tata Steel Jamshedpur and

¹ High Court of Jharkhand at Ranchi

² CrPC

³ CJM

Digital Supreme Court Reports

Kalinganagar; pursuant to that offer, an agreement was entered into between the appellant and the accused on 10.07.2014 thereby letting the vehicle to the accused for a period up to 31.03.2016 with effect from 14.07.2014; and, in furtherance thereof, possession of the Truck was given to the accused. In return, they paid one month rent, after deducting TDS. But thereafter, though the Truck had been in possession of the accused since July 2014, rent including arrears amounting to Rs.12,49,780 was not paid despite repeated false assurances.

4. On the aforesaid application under Section 156(3) CrPC, the learned CJM *vide* order dated 12.11.2016 directed the police to institute a case and investigate.
5. During investigation when despite notice under Section 41A CrPC the accused did not appear, the police applied to the CJM for issuance of NBW⁴ against the accused. The said application was allowed *vide* order dated 30.06.2017.
6. Aggrieved with the order dated 30.06.2017, the second and third respondents filed application under Section 482 CrPC for quashing the aforesaid order as well as proceedings pursuant to the FIR⁵ registered as Case No.78 of 2016 at P.S. Sakchi.
7. In the application under Section 482 CrPC it was, *inter alia*, alleged that no agreement was executed; that appellant intended to let out his Truck parked inside Tata Steel Factory, but, despite payment of advance rent of one month, necessary papers concerning the Truck were not provided, therefore, no agreement was executed; and even if it is taken that agreement was executed, no offence punishable under Sections 406 and 420 IPC is made out.
8. While the application under Section 482 CrPC was pending before the High Court, on a police report, cognizance was taken by CJM on 20.02.2020 and processes were issued under Section 204 CrPC. Consequently, respondent nos. 2 and 3 (original accused) sought amendment in their prayer before the High Court so as to include the prayer to quash the cognizance order.

4 Non-bailable Warrant

5 First Information Report

Somjeet Mallick v. State of Jharkhand & Others

9. The High Court *vide* impugned order quashed the order of cognizance and all further proceedings in the case concerned while leaving it open to the original complainant to take recourse to civil remedies.

Reasoning of the High Court

10. The High Court reasoned thus:
- a. There is no allegation of entrustment in the FIR, therefore, offence of criminal breach of trust, punishable under Section 406 IPC,⁶ is not made out.
 - b. Admittedly, one month rent was paid, therefore, dishonest intention from the very beginning was not there. The application is only for recovery of rent, which can be realised by taking recourse to appropriate civil proceeding. Hence, no offence punishable under Section 420 IPC is made out.
11. Aggrieved by the order of the High Court, original complainant is before us.
12. We have heard learned counsel for the parties and have perused the materials on record.

Submissions on behalf of Appellant

13. On behalf of the appellant, it was submitted:
- a. The FIR did disclose that after making payment of one month rent, no rent was paid despite false assurances. In such circumstances, a case for investigation was made out.
 - b. The High Court did not consider the materials collected during investigation which resulted in filing of charge sheet. As charge sheet was submitted, the High Court ought to have considered the materials collected during investigation before concluding whether offence has been committed or not.
 - c. The High Court failed to consider that whereabouts of the Truck was not known. Otherwise also, since the Truck was not returned, it could be taken that it has been misappropriated or disposed of by the accused in violation of the agreement, thereby disclosing commission of an offence of criminal breach of trust.

Digital Supreme Court Reports**Submissions on behalf of Accused-respondents**

14. On behalf of accused respondent(s), it was submitted:
- The FIR did not disclose commission of any offence, therefore the High Court was justified in quashing the entire proceeding.
 - There was no specific allegation in the FIR regarding disposal or misappropriation of the Truck, hence no case of criminal breach of trust was made out.
 - The offence of cheating is not made out inasmuch as dishonest intention from the very beginning is not disclosed by the averments in the FIR.
 - The High Court was justified in quashing the cognizance order and further proceedings.

Submissions on behalf of State

15. On behalf of State, it is submitted through an affidavit that the original complainant had informed that as per agreement between the parties, the Truck/Trailer was rented to the accused for plying. However, Truck's present location was neither known to the original complainant nor could be ascertained despite hectic efforts.

Analysis

16. Before we proceed to test the correctness of the impugned order, we must bear in mind that at the stage of deciding whether a criminal proceeding or FIR, as the case may be, is to be quashed at the threshold or not, the allegations in the FIR or the police report or the complaint, including the materials collected during investigation or inquiry, as the case may be, are to be taken at their face value so as to determine whether a *prima facie* case for investigation or proceeding against the accused, as the case may be, is made out. The correctness of the allegations is not to be tested at this stage.
17. To commit an offence, unless the penal statute provides otherwise, *mens rea* is one of the essential ingredients. Existence of *mens rea* is a question of fact which may be inferred from the act in question as well as the surrounding circumstances and conduct of the accused. As a sequitur, when a party alleges that the accused, despite taking possession of the Truck on hire, has failed to pay hire charges for

Somjeet Mallick v. State of Jharkhand & Others

months together, while making false promises for its payment, a *prima facie* case, reflective of dishonest intention on the part of the accused, is made out which may require investigation. In such circumstances, if the FIR is quashed at the very inception, it would be nothing short of an act which thwarts a legitimate investigation.

18. It is trite law that FIR is not an encyclopedia of all imputations. Therefore, to test whether an FIR discloses commission of a cognizable offence what is to be looked at is not any omission in the accusations but the gravamen of the accusations contained therein to find out whether, *prima facie*, some cognizable offence has been committed or not. At this stage, the Court is not required to ascertain as to which specific offence has been committed. It is only after investigation, at the time of framing charge, when materials collected during investigation are before the Court, the Court has to draw an opinion as to for commission of which offence the accused should be tried. Prior to that, if satisfied, the Court may even discharge the accused. Thus, when the FIR alleges a dishonest conduct on the part of the accused which, if supported by materials, would disclose commission of a cognizable offence, investigation should not be thwarted by quashing the FIR.
19. No doubt, a petition to quash the FIR does not become infructuous on submission of a police report under Section 173 (2) of the CrPC, but when a police report has been submitted, particularly when there is no stay on the investigation, the Court must apply its mind to the materials submitted in support of the police report before taking a call whether the FIR and consequential proceedings should be quashed or not. More so, when the FIR alleges an act which is reflective of a dishonest conduct of the accused.
20. In the instant case, the FIR alleges that the accused took original complainant's Truck/Trailer on hire for a period starting from 14.07.2014 up to 31.03.2016 at a monthly rent of Rs.33,000/- but, after payment of 1st month rent, the rent was not paid despite false assurances. The allegation that rent was not paid by itself, in ordinary course, would presuppose retention of possession of the vehicle by the accused. In such circumstances as to what happened to that Truck becomes a matter of investigation. If it had been dishonestly disposed of by the accused, it may make out a case of criminal

Digital Supreme Court Reports

breach of trust. Therefore, there was no justification to quash the FIR at the threshold without looking into the materials collected during the course of the investigation.

21. In our view, the High Court ought to have considered the materials collected during investigation before taking a call on the prayer for quashing the FIR, the cognizance order and the proceedings in pursuance thereof.
22. To peruse the police report and to understand as to what type of investigation was carried out by the police, on 19.07.2024 we required the State to place the charge-sheet on record. However, unfortunately, though the State filed its affidavit, the charge-sheet was not produced. The affidavit filed by the State only indicates that they were not able to trace out the Truck/Trailer. In these circumstances, we have no option but to remit the matter to the High Court to decide the quashing petition afresh in accordance with law after considering the materials collected by the investigating agency during the course of the investigation.
23. Accordingly, the appeal is allowed. The impugned order of the High Court is set aside. The quashing petition shall be restored to its original number and shall be decided afresh by the High Court in accordance with law and in the light of the observations above. All contentions and pleas are kept open for the parties to urge before the High Court.
24. Pending application(s), if any stand disposed of.

Result of the case: Appeal allowed.

[†]Headnotes prepared by: Divya Pandey