

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 29 of 2020

1. Dimple Kumari, aged about 35 years, w/o Sri. Murli Manohar Mishra, d/o Gopal Prasad Dubey
2. Gopal Prasad Dubey, aged about 56 years,
both r/o Mehboob Khan Tola, Purnea, P.O.-Bhatta Bazar, P.S.- K Hatt Thana, Dist.-Purnea, Bihar
3. Abhishek Kumar Dubey @ Abhishek Kumar, s/o Gopal Prasad Dubey, aged about 35 years, r/o Agrhara Dasharahalli, P.O.- Magadi Road, P.S.-Kamakshipalya, Dist.-Bengaluru, Karnataka
4. Simple Kumari @ Simple Pandey, aged about 36 years, w/o Sri Rajnish Pandey, r/o Banashankari 3rd Stage, Bangalore, P.O.-BSK 3rd stage, P.S.-Girinagar, Dist.-Bangalore, Karnataka

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Petitioners

Versus

1. The State of Jharkhand
2. Nisha Kumari, d/o late Mahabir Verma, r/o O.T.S. Pvt. Ltd.,
Machli Park Doranda, P.O.-Doranda, P.S.-Doranda, Dist.-Ranchi,
Jharkhand

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Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

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For the Petitioners	: Mr. Abhishek Kr. Dubey, Advocate
	: Mr. Mahesh Tewari, Advocate
For the State	: Mr. Saket Kumar, Addl. P.P.
For O.P. No.2	: Mr. Suraj Singh, Advocate

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By the Court:-

1. Heard the parties.

2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 Cr.P.C. with a prayer to quash the entire criminal proceeding as well as the order dated 17.12.2015 passed by the S.D.J.M., Ranchi whereby and where under, cognizance for the offences punishable under Section 323 and 341 of Indian Penal Code has been taken by the learned Sub Divisional Judicial Magistrate, Ranchi in Complaint Case No. 1973 of 2015.
3. The brief fact of the case is that the petitioners along with co-accused persons caused hurt and wrongfully restrained the complainant.
4. On the basis of the complaint, statement of the complainant on solemn affirmation and the statement of the inquiry witnesses, the learned Sub Divisional Judicial Magistrate, Ranchi has taken cognizance of the said offences.
5. It is submitted by the learned counsel for the petitioners that the allegation against the petitioners are false and this case has been instituted for wreaking vengeance only because the petitioner no.1 has instituted Complaint Case No. 1955 of 2015 against her husband- Murli Manohar Mishra and others at the instance of Murli Manohar Mishra by the complainant as the complainant-opposite party no.2 was arrayed as an accused no.5 in the said Complaint Case No. 1955 of 2015. It is next submitted by the learned counsel for the petitioners that the petitioner no.2 is an employee of State Bank of India at Purnea and the petitioner no.1 is his daughter residing at Purnea and the petitioner no.3 is working with Canara Bank since last more than six years at Bangalore and also residing there and the petitioner no.4

is a housewife residing at Bangalore with her husband. It is further submitted by the learned counsel for the petitioners that in the complaint there is no allegation of causing hurt and in the statement on solemn affirmation the complainant for the first time has invented new allegation of *marpit* being done with her. Relying upon the judgment of Hon'ble Supreme Court of India in the case of **Abhishek Saxena vs. The State of Uttar Pradesh & Anr.** reported in **2023 INSC 1088** in Criminal Appeal No. 3628 of 2023 dated 28.11.2023, paragraph no.9 of which reads as under:-

"9. As noted earlier, except the statement that 'they beat up me' by the complainant no material whatsoever is available on record in regard to the commission of the said offence. The incident allegedly occurred on 12.06.2016. In the recorded statement of the second respondent-complainant or in the counter affidavit filed by the first respondent there is not even a whisper that after the incident she went to a doctor or underwent any kind of treatment. Needless to say, that there is no statement – at least that injury report was prepared. In this context, it is also to be seen in respect of the incident, the FIR got registered only on 04.09.2016, that too much after the filing of petition No. 13/2016 by the appellant herein. Above all, as noted earlier, basic ingredients to constitute an offence under Section 323, IPC is lacking in the chargesheet."

It is submitted by the learned counsel for the petitioners that the allegation that the *marpit* was done will not constitute the offence punishable under Section 323 of Indian Penal Code in the background of clear and categorical stand of the petitioners that this case has been instituted for wreaking vengeance.

6. Relying upon the judgment of Hon'ble Supreme Court of India in the case of **N.S. Madhanagopal & Anr. vs. K. Lalitha** reported in **2022 LiveLaw (SC) 844**, relevant portion of which reads as under:-

"xxxx xxxx xxxx xxxx The complaint also fails to disclose the necessary ingredients to constitute the offence of wrongful restraint. In order to

attract application of Section 341 which provides for punishment for wrongful restraint, it has to be proved that there was obstruction by the accused; (ii) such obstruction prevented a person from proceeding in a direction to which he had a right to proceed; and (iii) the accused caused such obstruction voluntarily. The obstructor must intend or know or would have reason to believe that the means adopted would cause obstruction to the complainant.

The averments made in the complaint according to us are not sufficient to even constitute the offence of wrongful restraint. In the overall view of the case, we are convinced that no case is made out against the appellants herein as alleged by the complainant.

xxxx xxxx xxxx xxxx"

7. It is submitted by the learned counsel for the petitioners that there is no allegation against the petitioners to constitute the offence punishable under Section 341 of Indian Penal Code. Hence, it is submitted that the prayer as made in this criminal miscellaneous petition be allowed.
8. Learned Additional Public Prosecutor and the learned counsel for the opposite party no.2 opposes the prayer to quash the entire criminal proceeding and submits that the complainant in her statement has categorically stated that she being abused and *marpit* having been done by the petitioner no.1 hence, at this nascent stage the entire criminal proceeding ought not to be quashed and set aside.
9. Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that the fact that prior to institution of this case the petitioner no.1 instituted Complaint Case No. 1955 of 2015 against the complainant has remained undisputed. There is no allegation made in the complaint of any assault being made by any of the accused persons to her. The allegation of giving push and pull (*Dhaka mukki*) and *marpit* are general and omnibus allegations. There is no specific

allegation as to on which part of the body assault was made by whom or of sustaining pain in any particular part of the body. There is absolutely no allegation regarding wrongful restraint of the complainant made by any of the accused persons.

10. Under such circumstances keeping in view the fact that earlier the petitioner no.1 instituted the case against the complainant and as the ingredients of the offence punishable under Section 323 and 341 of Indian Penal Code is lacking, this Court is of the considered view that the materials in the record suggest that this case has been instituted for wreaking vengeance; as the counter blast to the case instituted by the petitioner no.1.
11. Hence, this Court is of the considered view that the continuation of the criminal proceeding will amount to abuse of process of law and this is a fit case where the entire criminal proceeding as well as the order dated 17.12.2015 passed by the S.D.J.M., Ranchi in connection with Complaint Case No. 1973 of 2015 be quashed and set aside qua the petitioners.
12. Accordingly, the entire criminal proceeding as well as the order dated 17.12.2015 passed by the S.D.J.M., Ranchi in connection with Complaint Case No. 1973 of 2015 is quashed and set aside qua the petitioners.
13. In the result, this criminal miscellaneous petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 31st July, 2024
AFR/Sonu-Gunjan/-