

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.109 of 2024

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1. Pankaj Kishore Upadhyay, aged about 41 years,
 2. Subhash Chandra Upadhyay, aged about 33 years,

Both sons of Kaushal Upadhyay, both residents of village
Checharia, P.O. Semaure, P.S. Kandi, District Garhwa, (Jharkhand)

... Petitioners

Versus

The State of Jharkhand ... Opposite Party

For the Petitioners	: Mr. Ram Kinkar, Advocate
For the State	: Mr. Shiv Shankar Kumar, Addl.P.P.

P R E S E N T

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 482 of the Code of Criminal Procedure with a prayer to quash and set aside the entire criminal proceedings including the order taking cognizance dated 12.04.2023 in connection with Kandi P.S. Case No.10 of 2023 corresponding to G.R. No.338 of 2023 whereby and where under cognizance for the offence punishable under Sections 188/34 of the Indian Penal Code has been taken against the petitioners by the learned Judicial Magistrate-1st Class, Garhwa and the said case is now pending in the court of learned Judicial Magistrate-1st Class, Garhwa.

3. The allegation against the petitioners is that the petitioners, in furtherance of their common intention, with the co-accused persons disobeyed the order duly promulgated by public servant. The case was instituted upon the written report submitted by a private individual alleging that in violation

of the order promulgated by the Sub-Divisional Magistrate, Garhwa and in violation of the said order, has constructed a septic tank of a lavatory.

4. Learned counsel for petitioners submits that Section 195 of the Cr.P.C. envisages that no court shall take cognizance of the offence *inter alia* punishable under Section 188 of the Indian Penal Code except on a complaint in writing of the public servant concerned or some other public servant to whom the concerned public servant is administratively subordinate. In support of his contention, learned counsel for the petitioners relies upon the judgment of the Hon'ble Supreme Court of India in the case of **C. Muniappan & Others vs. State of Tamil Nadu** reported in (2010) 9 SCC 567 paragraph-35 of which reads as under:-

"35. Undoubtedly, the law does not permit taking cognizance of any offence under Section 188 IPC, unless there is a complaint in writing by the competent public servant. In the instant case, no such complaint had ever been filed. In such an eventuality and taking into account the settled legal principles in this regard, we are of the view that it was not permissible for the trial court to frame a charge under Section 188 IPC. However, we do not agree with the further submission that absence of a complaint under Section 195 CrPC falsifies the genesis of the prosecution case and is fatal to the entire prosecution case." (Emphasis supplied)

and also relies upon the judgment of a co-ordinate Bench of this Court in the case of **Hemant Soren vs. The State of Jharkhand & Another** passed in **Cr.M.P. No.1861 of 2022** wherein the co-ordinate Bench relied upon the judgment of the Hon'ble Supreme Court of India in the case of **C. Muniappan & Others vs. State of Tamil Nadu (supra)** as in that case the complaint was not filed by the public servant or anyone superior to him, whose order was violated and the co-ordinate Bench relied upon the judgment of the Hon'ble Supreme Court of India in the case of **State of Haryana vs. Bhajan Lal** reported in **1992 Suppl. (1) SCC 335**. Hence, it is submitted that the entire criminal

proceedings including the order taking cognizance dated 12.04.2023 in connection with Kandi P.S. Case No.10 of 2023 corresponding to G.R. No.338 of 2023 which is now pending in the court of learned Judicial Magistrate-1st Class, Garhwa, be quashed and set aside.

5. Learned Addl.P.P. appearing for the State, on the other hand, opposes the prayer of the petitioner to quash and set aside the entire criminal proceedings including the order taking cognizance dated 12.04.2023 in connection with Kandi P.S. Case No.10 of 2023 corresponding to G.R. No.338 of 2023 which is now pending in the court of learned Judicial Magistrate-1st Class, Garhwa and submits that the charge-sheet submitted by the Investigating Officer of the case who is a police officer, is deemed to be a complaint in terms of Explanation of Section 2 (d) of the Code of Criminal Procedure.

6. 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 as has already been held by the Hon'ble Supreme Court of India in the case of **C. Muniappan & Others vs. State of Tamil Nadu (supra)** that law does not permit taking cognizance of any offence under Section 188 of the Indian Penal Code unless there is a complaint in writing by the competent public servant. Now, in this case the Sub-Divisional Magistrate is stated to be the public servant concerned whose order has been allegedly disobeyed. Neither the Sub-Divisional Magistrate nor anyone superior to him has lodged the F.I.R. So far as the deemed provision as has been provided for in the Explanation to Section 2 (d) of the Code of Criminal Procedure is concerned, the same relates to commission of a non-cognizable offence but the offence punishable under Section 188 of the Indian Penal Code is cognizable offence.

As the learned Magistrate has taken cognizance of the offence punishable under Section 188/34 of the Indian Penal Code even though there is no complaint filed either by the Sub-Divisional Magistrate or anyone superior to him, hence, in the considered opinion of this Court the continuation of this criminal proceedings against the petitioners will amount to abuse of process of law and this is a fit case where the entire criminal proceedings including the order taking cognizance dated 12.04.2023 in connection with Kandi P.S. Case No.10 of 2023 corresponding to G.R. No.338 of 2023 which is now pending in the court of learned Judicial Magistrate-1st Class, Garhwa, as prayed for by the petitioners, be quashed and set aside.

7. Accordingly, the entire criminal proceedings including the order taking cognizance dated 12.04.2023 in connection with Kandi P.S. Case No.10 of 2023 corresponding to G.R. No.338 of 2023 which is now pending in the court of learned Judicial Magistrate-1st Class, Garhwa, is quashed and set aside qua the petitioners.

8. In the result, this Cr.M.P. stands allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 15th of March, 2024
AFR/ Animesh