



IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. M. P. No. 462 of 2016

Kundan Singh, S/o. Late Kripal Singh, resident of H. No. 10, Nanak
Nagar, Dhala Road, PO – Golmuri, PS – Golmuri, District – East
Singhbhum, Jamshedpur **... ..Petitioner**

Versus

1. The State of Jharkhand.
2. Tinsplate Company, through its Vice President (C), Golmuri,
Jamshedpur, PO & PS – Golmuri, Town Jamshedpur, District –
East Singhbhum.

... ..Opp. Parties

For the Petitioner : Mr. Ashim Kr. Sahani, Advocate
: Mr. Sachin Mahto, Advocate
For the Resp.- TATA : Mr. Kumar Harsh, Advocate

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 482 of the Cr.P.C. with the prayer to quash the order dated 15.10.2015 passed in Criminal Revision No. 202 of 2011 by the learned Additional Sessions Judge, - VI, Jamshedpur, by which the learned Additional Sessions Judge set aside the order passed by the Sub Divisional Magistrate, Dhalbhum, Jamshedpur in Misc. Case No. 373A of 2010.

3. The brief fact of this case is that the S.D.M., Dhalbhum, Jamshedpur vide order dated 21.09.2011 signed on 31.10.2011 in Misc. Case No. 373A



of 2010, which was a proceeding under Section 145 of the Cr.P.C., rejected the prayer of the Opposite Party No. 2 therein, who was the revisionist before the revisional court, for deciding the issue of maintainability of proceeding as a preliminary issue. The said order dated 21.09.2011 was challenged by the Opposite Party No. 2 herein, who was the revisionist before the learned Additional Sessions Judge – VI, Jamshedpur by filing Criminal Revision No. 202 of 2011. The learned Additional Sessions Judge – VI, Jamshedpur, considered that the Opposite Party in the said Misc. Case No. 373A of 2010 raised the question of maintainability of the said proceeding on the ground that there has been earlier proceeding under Section 145 of the Cr.P.C. with respect to the same disputed land and with final finding therein, has taken possession. Hence, the proceeding in Misc. Case No. 373A of 2010 is barred by the principles of *Res Judicata*; but the said contention was rejected by the S.D.M., Dhalbhum, Jamshedpur on the ground that the parties are different and likelihood of breach of peace is there. Secondly, the S.D.M., Dhalbhum, Jamshedpur considered that the principle of *Res Judicata* is not applicable to the proceeding under Section 145 of the Cr.P.C. Thirdly, the S.D.M., Dhalbhum, Jamshedpur observed that there is no express provision in the Code of Criminal Procedure for hearing on the point of maintainability on any on-going proceeding under Section 145 of the Cr.P.C. and detail inquiry was necessary for the adjudication of the dispute.



4. The Revisional Court considered that it is not denied that in all the proceedings, it has been consistently held by the courts concerned, that the subject matter of land is in possession of the revisionist-company by virtue of a sub-lease executed in its favour by Tata. The Revisional Court further considered that the claim of the revisionist is mainly based on final order passed by the Competent Court in Misc. Case No. 569 of 1990 which has been between Jaswant Singh and the revisionist-company. The Revisional Court further considered that it is an admitted fact that Jaswant Singh is the brother of the present Opposite Party No. 1 and both of them claim right and possession over the disputed land through their common predecessor in interest; that is their father Tripal Singh. The Revisional Court also considered that it is the settled principle of law that the doctrine of *Res Judicata* operates not only against parties but their privies also i.e., persons claiming under parties to decision. That is why in Section 145 of the Cr.P.C., the word used is "Parties concerned" and not "Parties disputing" and the same is construed broadly as to include their privies also. By thus considering, the Revisional Court held the first reason given by the learned S.D.M that parties are different is not sustainable in law. In respect of the second ground of rejection of the prayer of the revisionist by the S.D.M., Dhalbhum, Jamshedpur regarding applicability of the principle of *Res Judicata* in the proceeding under Section 145 of the Cr.P.C., the Revisional Court relied upon the judgment of *the Hon'ble Supreme Court* in the case passed in *Civil Appeal No. 52 of*



1969 [Workmen of Straw Board Manufacturing Co., Ltd. Vs. M/s. Straw Board Manufacturing Co., Ltd] reported in *AIR 1974 SC 1132 :: 1974 LAB.I.C. 730* and *Civil Appeal Nos. 1 to 5 of 1963 [The Associated Cement Staff Union Vs. The Associated Cement Co. Ltd. Bombay]* reported in *AIR 1964 SC 914* wherein it was held that a plea of *Res Judicata* on general principle can successfully be taken irrespective of the judgment of courts of exclusive jurisdiction, like the revenue court and administrative courts etc. It was further held that once a final decision was passed and a proceeding under Section 145 of the Cr.P.C. declaring one of the parties in possession and for binding the other parties not to disturb such possession; the matter becomes final unless later a competent court of civil jurisdiction decides to the contrary, on any subsequent suit or proceeding. Therefore, no fresh proceeding under Section 145 of the Cr.P.C. was entertainable and went on to hold that the basic rule of conclusiveness of order / judgment (*Res Judicata*) is equally applicable to a proceeding under Section 145 of the Cr.P.C.

5. So far as this third reason assigned by the learned Sub-Divisional Magistrate, the revisional court held that if a proceeding is not maintainable being barred by any law, it cannot be proceeded with only on the ground that there is no provision for holding hearing on its maintainability, because no purpose is served thereby.

6. So far as the last ground of the S.D.M., Dhalbhum, Jamshedpur, the revisional court considered that the rights of parties have been decided



within a time not too remote from the date on which the application under Section 145 of the Cr.P.C. has been filed, therefore, there can be no *bona fide* dispute between the parties and by thus holding, the learned revisional court set aside the order impugned before it and allowed the revision application.

7. It is submitted by the learned counsel for the petitioner that the learned Additional Sessions Judge failed to appreciate that the Code of Civil Procedure will not be applicable in a criminal proceeding. It is next submitted that the learned Additional Sessions Judge ought not to have held that the principle of *Res Judicata* can be decided as a preliminary issue.

8. The learned counsel for the petitioner next relied upon the judgment of the Hon'ble Supreme Court in the case of *N. R. Ghosh @ Nikhil Ranjan Ghose Vs. State of West Bengal* reported in 1959 SCC OnLine SC 181, in Para No. 27 of which it has in no uncertain manner been held that the rule of *Res Judicata* applies to all final judgments. The rule is not a matter of technicality, it is based on fundamental principles expressed in the maxims, "*interest reipublicae ut sit finielitium*, and *nemo debet bis vexari pro una et eadem causa* : see *Halsbury's Laws of England*, (3rd Edn.,) Vol. 15 p. 177 Brett, M. R. said *In re May*", that means the doctrine of *Res Judicata* is not a technical doctrine applicable only to records. It is a very substantial doctrine, and it is one of the most fundamental doctrines of all Courts, that there must be an end of litigation, and that the parties



have no right of their own accord. Hence, it is submitted that the prayer as prayed for in this Cr.M.P., be allowed.

9. Learned Additional Public Prosecutor and the learned counsel for the Opposite Party No. 2 on the other hand defends the impugned judgment passed by the learned Additional Sessions Judge, Jamshedpur by relying upon the judgment of the Hon'ble Supreme Court in the case of *Bhagat Ram Vs. State of Rajasthan* reported in (1972) 2 SCC 466 in *Para No. 13*, in which the Hon'ble Supreme Court has in no uncertain manner held that the principle of *Res Judicata* is also applicable to criminal proceedings and it is not permissible in the subsequent stage of the same proceeding or in some other subsequent proceedings to convict a person for an offence, in respect of which an order for his acquittal has already been recorded. In the said judgment, the Hon'ble Supreme Court relied upon the judgment of Five Judge Bench of **Privy Council** ruling in *Sambasivam V. Public Prosecutor, Federation of Malaya* reported in 1950 AC 458 wherein it was held that the maxim '*res judicata pro veritate ascipitur*' is no less applicable to criminal than to civil proceedings. In that case, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any steps to challenge it at the second trial. After having tried a question between them and obtained a decision of a Court, to start a litigation again is unnecessary for the same question.



10. Learned counsel for the Opposite Party No. 2 also relies upon the judgement of the Hon'ble Supreme Court in the case of *Nikhil Ranjan Ghose Vs. State of West Bengal (supra)* and submitted that in that case, in paragraph-28, the Hon'ble Supreme Court also relied upon the said judgment of Five Judge Bench of Privy Council in the case of *Sambasivam V. Public Prosecutor, Federation of Malaya (supra)*.

11. Learned counsel for the Opposite Party No. 2 next relied upon the judgment of the Hon'ble Allahabad High Court in the case of *Khunni Mal Vs. Mohd. Aakil & Others* reported in (1987) SCC OnLine ALL 837 where the said principles were also followed. It is next submitted that there being no illegality in the impugned order, this Cr.M.P. being without any merit, be dismissed.

12. Having heard the submissions made at the bar and after going through the materials on record, it is pertinent to mention here that recently the Hon'ble Supreme Court in the case of *S.C. Garg Vs. State of Uttar Pradesh & Another* reported in 2025 INSC 493 had the occasion to consider the applicability of the principle of *Res Judicata* which is a fundamental law doctrine in civil law that bars the re-litigation of issues already adjudicated regarding its applicability to criminal proceedings. There was a conflict in judicial precedents on *Res Judicata* in criminal law cases. The principle that *Res Judicata* is applicable in criminal cases were followed in a line of judgment including *Nikhil Ranjan Ghose Vs. State of West Bengal (supra)*. A three judge bench also held the same in the



cases of **Preetam Singh & Another Vs. State of Punjab** reported in AIR 1956 SC 415 and **Bhagat Ram Vs. State of Rajasthan (supra)** and also in the case of **State of Rajasthan Vs. Tara Chandra Jain** reported in (1974) 3 SCC 72. Some of them including the judgment of **Preetam Singh** was based on the said Five Judge Privy Council ruling in *Sambasivam V. Public Prosecutor, Federation of Malaya (supra)*. The contrary view is that the doctrine of *Res Judicata* has no application in criminal proceeding *inter alia* were followed in the case of *Devendra & Others Vs. State of Uttar Pradesh & Another* reported in (2009) 7 SCC 495 and *Muskan Enterprises & Another Vs. State of Punjab & Another* reported in 2024 INSC 1046 where the Hon'ble Supreme Court who was of the view that the *Res Judicata* does not bar successive petitions under Section 482 of the Cr.P.C. for quashing of FIR or criminal proceeding particularly, when no adjudication on merits, has occurred.

13. In the case of **S.C. Garg (supra)**, the Hon'ble Supreme Court laid down a harmonized Interpretation that the principle of *Res Judicata* or the principle of estoppel does apply to criminal proceedings provided that a competent court has rendered a final and conclusive decision on the merit of a specific issue and in case, it is there, the same will be binding on parties in any subsequent litigation involving the same issue. But the rider was that the doctrine does not intend to bar successive quashing petition under Section 482 of the Cr.P.C., where no adjudication on fact or law has yet been recognized. Particularly, dismissal of an earlier petition



at a preliminary stage, does not preclude the subsequent petition based on new grounds or developments such as fresh evidence in the charge-sheet. The Hon'ble Supreme Court in the case of *S.C. Garg (supra)* re-affirmed the hierarchical importance of a judicial proceeding by holding that the decision in case of *Preetam Singh & Another Vs. State of Punjab (supra)* being a decision by a larger three judge bench, based upon the five judge bench ruling of *Privy Council* in *Sambasivam V. Public Prosecutor, Federation of Malaya (supra)* , there is greater precedential weight than the latter two-judge decisions in the case of *Devendra (supra)* and *Muskan Enterprises (supra)*.

14. So, the judgment of *S.C. Garg (supra)* has confirmed that the issue of res judicata or estoppel operates in criminal law subject to the condition that the issue was conclusively determined after trial.

15. In view of the settled principle of law discussed above, this Court is not inclined to accept the contention of the petitioner that the learned Additional Sessions Judge – VI, has come to an erroneous conclusion that the principle of finality of proceeding is applicable to a proceeding under Section 145 of the Cr.P.C. So, once it is held that the principle is applicable, the absence of any specific provision in this Cr.P.C., cannot be a ground for not considering the same as a preliminary issue. Hence, this Court do not find any illegality in the learned Additional Sessions Judge – VI, Jamshedpur in setting aside the order dated 21.09.2011 signed on 31.10.2011 passed by the learned S.D.M., Jamshedpur whereby and



(2026: JHHC-7791)
2023: JHHC-44582

whereunder the S.D.M., Jamshedpur rejected the petition filed by the petitioner for deciding the maintainability of the proceeding as a preliminary issue. Thus, there being no illegality in the impugned order, this Court is not inclined to accept the prayer made by the petitioner in this Cr.M.P. in exercise of its power under Section 482 of the Cr.P.C..

16. Accordingly, this Criminal Miscellaneous Petition, being without any merit, is *dismissed*.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 19th March, 2026
AFR/ Aditi
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