

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1528 of 2025

1. Binod Sharma, s/o Shyam Sundar Thakur, aged about 40 years
 2. Babita Devi, w/o Binod Sharma, aged about 36 years
 3. Subhash Kumar, s/o Sukhi Mistri, aged about 27 years
 4. Shyam Sundar Thakur, s/o late Tara Thakur, aged about 73 years,
- All are r/o Village-Bajaniya, P.O.-Madhopur, P.S.-Satgawan, Dist.-
Koderma

.... Petitioners

Versus

1. The State of Jharkhand
2. XXXXX

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner	: Mr. Sanjeev Kumar, Advocate
For the State	: Mr. S.K. Tiwari, Spl. P.P.
	

By the Court:-

1. Heard the parties.
2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of B.N.S.S., 2023 with the prayer to quash the order dated 23.08.2024 passed by the learned S.D.J.M., Koderma in connection with Complaint Case No. 195 of 2022 by which the learned S.D.J.M., Koderma has found *prima facie* case of the offence punishable under Sections 323, 354B, 379, 506, 452 of the Indian Penal Code and under Section 66 E of Information Technology Act as also to quash the order dated 07.02.2025 passed by the learned Sessions Judge, Koderma in Criminal Revision No. 78 of 2024 whereby and where

under, the learned Sessions Judge, Koderma dismissed the criminal revision.

3. Though notice has validly been served upon the opposite party no.2 yet no one turns up on behalf of the opposite party no.2 in spite of repeated calls.
4. The brief fact of the case is that on 27.01.2022 the petitioners committed house trespass with preparation to hurt and assault the complainant and after assaulting the complainant disrobed her by use of force, tore her blouse and the petitioner no.1 by use of force pushed the complainant on the ground and forced to him upon her and put his hand over the breast of the complainant, petitioner no.2 captured the said occurrence in the mobile phone by making video and when the son and daughter of the complainant raised hue and cry, the petitioner no.4 assaulted the children of the complainant and also criminally intimidated them by saying that he will kill the father of the children of the complainant. The petitioners also committed theft of silver chain of the complainant from her neck and also threatened the complainant not to report the matter to police.
5. On the basis of the complaint, statement of the complainant on solemn affirmation and the statement of the inquiry witnesses, the learned S.D.J.M., Koderma found *prima facie* case for the offences punishable under Sections 323, 354B, 379, 506, 452 of the Indian Penal Code and under Section 66 E of Information Technology Act and issued summons.

6. After their appearance in the court concerned, the petitioners filed a petition to discharge them under Section 245 (2) of Cr.P.C. The learned S.D.J.M., Koderma considered that from the perusal of the materials in the record, it transpires that the complainant has stated the fact that on 27.01.2022 at about 08:00 am, the accused persons trespassed into the house of the complainant disrobed the complainant by use of force, tore her clothes, assaulted her children causing hurt to them and criminally intimidated them and also committed theft of silver chain from the neck of the complainant. It was also observed that whether the statement of the witnesses can withstand the test of the cross-examination can only be looked into at the stage of trial and thus, without finding any merit in the petition for discharge, filed by the petitioner, rejected the prayer to discharge the petitioners.
7. Being aggrieved by the order dated 23.08.2024, the petitioner filed Criminal Revision No. 78 of 2024 in the Court of Sessions Judge, Koderma. The learned Sessions Judge, Koderma vide order dated 07.02.2025 considered that the materials in the record are sufficient enough to constitute *prima facie* material for framing of charge against the revisionist and did not find any illegality in the order impugned before him passed by the learned S.D.J.M., Koderma and also considered the settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **State of Delhi vs. Gyan Devi & Ors.** reported in **AIR 2001 SC 40** wherein, the Hon'ble Supreme Court of India reiterated the

settled principle of law that at the stage of framing of charge, the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the Court to consider the sufficiency of the materials to establish the offence alleged against the accused persons and by thus considering, dismissed the criminal revision.

8. It is submitted by the learned counsel for the petitioners that the learned S.D.J.M., Koderma and the learned Revisional Court has failed to take into consideration that prime accused namely Binod Sharma is a constable in Jharkhand police and was on duty at the time of occurrence and was not present at the place of occurrence. It is next submitted by the learned counsel for the petitioners that they also failed to take into consideration that the case has falsely been foisted more so in the absence of any injury report. Hence, it is submitted that the prayer as prayed for by the petitioner in this criminal miscellaneous petition be allowed.
9. Learned Spl. P.P. on the other hand vehemently opposes the prayer of the petitioners made in this criminal miscellaneous petition and submits that plea of *alibi* of the petitioner no.1 that he was not present at the place of occurrence and he was posted somewhere else at the time of occurrence is a question of fact which can only be adjudicated while adducing evidence but the same is not a ground for quashing the entire criminal proceeding; when it is the specific case of the complainant, which has also been supported by the inquiry witnesses, that the petitioner no.1

was present at the place of occurrence; at the time of occurrence. It is next submitted by learned Spl. P.P. that it is the undisputed case of the complainant that if the entire allegation against the petitioners are considered to be true in their entirety, then the offences in respect of which *prima facie* case has been found by the learned S.D.J.M., Koderma is in fact being made out. The contention of the petitioners that the allegations against the petitioners are false is at best a defence; which the petitioners can take at the time of trial of the case but certainly, the same is not a ground to discharge the petitioners. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

10. 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 it is a settled principle of law that the defence of the accused persons and the veracity of the evidence put forth by the accused, cannot be considered in exercise of jurisdiction under Section 482 Cr.P.C. which corresponds to Section 528 of B.N.S.S., 2023, by the High Court, as that would be the job of the trial court, as has been held by the Hon'ble Supreme Court of India, in the case of **State of Madhya Pradesh vs. Awadh Kishore Gupta & Ors.** reported in 2004 2 Supreme 501.

11. It is also a settled principle of law that in exercise of power under Section 482 Cr.P.C. which corresponds to Section 528 of

B.N.S.S., 2023, the genuine prosecution cannot be stifled as has been held in the case of **Monica Kumar (Dr.) and Another vs. State of Uttar Pradesh and others** reported in (2008) 8 SCC 781.

12. The Hon'ble Supreme Court of India, in the case of **State of Uttar Pradesh & Anr. vs. Akhil Sharda & Ors.** reported in 2022 LiveLaw SC 594 reiterated the settled principle of law that no mini trial can be conducted by the High Court in exercise of its jurisdiction under Section 482 Cr.P.C. which corresponds to Section 528 of B.N.S.S., 2023, the relevant portion of which reads as under:-

"Having gone through the impugned judgment and order passed by the High court has set aside the criminal proceedings in exercise of powers under Section 482 CrPC, it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482CrPC. As observed and held by this court in a catena of decisions, no mini trial can be conducted by the High Court in exercise of power under Section 482CrPC, jurisdiction and at the stage of deciding the application under Section 482CrPC, the High Court cannot get into appreciation of evidence of the particular case being considering. (Emphasis supplied)

13. Now coming to the facts of the case, the undisputed fact remains that if the entire allegation made against the petitioners are considered to be true in their entirety, then the offence in respect of which *prima facie* has been found by the learned S.D.J.M., Koderma is in fact being made out but the contention of the petitioners is firstly the plea of *alibi* of the petitioner no.1 that he was not present at the place of occurrence is concerned, as has rightly been submitted by the learned Spl. P.P. the question as to

whether the petitioner no.1 was present at the place of occurrence or not is a question of fact, for determination of which, evidence is required to be recorded; which the High Court cannot do in exercise of the power under Section 528 of B.N.S.S., 2023. The other ground of the petitioners is that the allegations against the petitioners are false; again, that is at best is the defence which again can be ascertained during the trial only by recording of evidence but certainly the same is not a ground to discharge the accused persons from a case on the ground that the allegations are false.

14. In view of the discussions made above, this Court is of the considered view that this is not a fit case where the power under Section 528 of B.N.S.S., 2023 is to be exercised by this Court to accede to the prayer of the petitioners as made in this criminal miscellaneous petition.

15. Accordingly, this criminal miscellaneous petition being without any merit is dismissed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 13th July, 2026
AFR/Gunjan/-

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