

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1012 of 2026

Shaikh Mohammad @ Sheikh Mohammad, aged about 28 years, S/o
Shaikh Abdul Mannan, R/o Behind M.A.D.A Head Office, Qtr. No.
B/53 Mada Colony, Luby Circular Road, P.O. and P.S. -Dhanbad,
District -Dhanbad, Jharkhand.

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Petitioner

Versus

The State of Jharkhand

....

Opp. Party

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

.....

For the Petitioner

: Mr. Shailesh Kumar Singh, Advocate

: Mr. Abhijeet Kumr Singh, Advocate

For the State

: Mr. V.K. Vashistha, Spl. P.P.

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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 528 of the B.N.S.S., 2023. with the prayer to quash the entire criminal proceeding arising out of Barwadda P.S. Case No. 156 of 2021(S) corresponding to G.R. Case No. 3506 of 2025(S) including the order taking cognizance dated 12.11.2025, passed by the learned Judicial Magistrate -1st Class, Dhanbad in connection with the said Barwadda P.S. Case No. 156 of 2021(S) corresponding to G.R. Case No. 3506 of 2025(S).
3. The brief fact of the case is that Barwadda P.S. Case No. 156 of 2021 was registered on the basis of the written report submitted by the A.S.I. of Police, Barwadda Police Station, Dhanbad. The petitioner is not a named accused person of the case. During the

course of investigation, the complicity of the petitioner was found out and on the basis of the materials collected during the investigation of the case, charge sheet has been submitted against him. On the basis of the charge sheet, the learned Magistrate has taken cognizance of the offences punishable under Section 25(1-B)a, 25(6), 26 & 35 of the Arms Act.

4. It is submitted by the learned counsel for the petitioner that the name of the petitioner has surfaced solely on the basis of the confessional statement of the co-accused recorded by the police during the investigation of the case which is not admissible in evidence. It is next submitted that the essential ingredients in respect of which charge sheet has been submitted against the petitioner is totally lacking. It is then submitted that the investigating officer after a lapse of more than four years from the date of institution of the F.I.R. has filed a supplementary charge sheet impleading the petitioner without discovery of any fresh evidence. It is then submitted that the learned Judicial Magistrate -1st Class, Dhanbad has taken cognizance against the petitioner in a routine and mechanical manner without recording any satisfaction as to the existence of prima facie materials against him, without discussing the evidentiary value of confessional statements.

5. It is next submitted by the learned counsel for the petitioner relying upon the Judgment of the Hon'ble Supreme Court of India in the case of **Sujoy Ghosh Vs. The State of Jharkhand and Ors.**, reported in **2026 INSC 267** that therein the Hon'ble Supreme Court of India has reiterated the principle of law regarding exercise of the

jurisdiction under Section 482 of the Code of Criminal Procedure or Article 226 of the Constitution of India for seeking quashing either the F.I.R. or the criminal proceeding on the ground that they are manifestly frivolous, vexatious or malicious but it is submitted by the learned counsel for the petitioner that the petitioner is not seeking quashing of the entire criminal proceeding on the ground of it being malicious as such. It is next submitted that the petitioner seeks quashing of the proceeding on the ground that the absence of evidence renders the proceeding to be a malicious.

6. The learned counsel for the petitioner next relies upon the Judgment of the Hon'ble Supreme Court of India in the case of **Sharif Ahmed and Others Vs. State of Uttar Pradesh and Others**, reported in **MANU/SC/0368/2024** and submits that therein the Hon'ble Supreme Court of India has laid down the law that the investigating officer must make clear and complete entries of all columns in the charge sheet so that the court can clearly understand which crime has been committed by which accused and what is the material evidence available on the record. It is next submitted that the allegations against the petitioner are false. Hence, it is submitted that the prayer as prayed for by the petitioner in this criminal miscellaneous petition be allowed.
7. The learned Spl. P.P. on the other hand vehemently opposes the prayer as prayed for by the petitioner in this criminal miscellaneous petition and drawing attention of this Court to the Judgment of the Hon'ble Supreme Court of India in the case of **Pramila Devi Vs.**

State of Jharkhand, reported in **2025 SCC Online SC 886**, para -15 of which reads as under:-

“15. Coming to the first issue, we have no hesitation to record that the approach of the High Court was totally erroneous. Perusal of the Order taking cognizance dated 13.06.2019 discloses that the Additional Judicial Commissioner has stated that the ‘case diary and case record’ have been perused, which disclosed a prima facie case made out under Sections 498(A), 406 and 420 of the IPC and Section 3 (1)(g) of the SC/ST Act against the accused including appellants. Further, we find the approach of the Additional Judicial Commissioner correct inasmuch as while taking cognizance, it firstly applied its mind to the materials before it to form an opinion as to whether any offence has been committed and thereafter went into the aspect of identifying the persons who appeared to have committed the offence. Accordingly, the process moves to the next stage; of issuance of summons or warrant, as the case may be, against such persons.”

submits that therein the Hon’ble Supreme Court of India has approbated the order taking cognizance of the Additional Judicial Commissioner, Ranchi as the Additional Judicial Commissioner, Ranchi has taken cognizance on the basis of the materials available in the record after perusal of the case diary and case record.

8. So far as the contention of the petitioner regarding the Judgment of the Hon’ble Supreme Court of India in the case of **Sharif Ahmed and Others Vs. State of Uttar Pradesh and Others** (supra) is concerned, the learned Spl. P.P. submits that no doubt in this case, the investigating officer has made clear and complete entries of all the columns in the charge sheet, prescribed in law but even assuming for the sake of argument though not admitting that the same has not been filled up, keeping in view the fact that the cognizance of the offence has already been taken, in view of the Judgment of the Hon’ble Supreme Court of India in the case of **H.N.**

Rishbud Vs. State (Delhi Administration), reported in (1954) 2 SCC

934 para -13 of which reads as under:-

“13. The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190 CrPC as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the court to take cognizance. Section 190 CrPC is one out of a group of sections under the heading “Conditions requisite for initiation of proceedings”. The language of this section is in marked contrast with that of the other sections of the group under the same heading i.e. Sections 193 and 195 to 199. These latter sections regulate the competence of the court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, clauses (a), (b) and (c) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under clause (a) or (b) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537 CrPC which is in the following terms is attracted:

“537. Finding or sentence when reversible by reason of error or omission in charge or other proceedings. – Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account –

(a) of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code,

unless such error, omission, irregularity or misdirection has in fact occasioned a failure of justice.”

If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a

miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the court for trial is well-settled as appears from the cases in Parbhu v. King Emperor [Parbhu v. King Emperor, 1944 SCC OnLine PC 1 : (1943-44) 71 IA 75 : AIR 1944 PC 73] and Lumbhardar Zutshi v. R. [Lumbhardar Zutshi v. R., 1949 SCC OnLine PC 64 : (1949-50) 77 IA 62 : AIR 1950 PC 26] These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the court. We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby." (Emphasis supplied)

It is submitted by the learned Spl. P.P. that if cognizance is in fact taken on a Police Report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have been brought about a miscarriage of justice.

9. Relying upon the Judgment of the Hon'ble the Supreme Court of India the case of **Central Bureau of Investigaton. Vs. Aryan Singh etc.**, reported in **2023 SCC Online SC 379**, para -11 of which reads as under:

"11. One another reason pointed by the High Court is that the initiation of the criminal proceedings/proceedings is malicious. At this stage, it is required to be noted that the investigation was handed over to the CBI pursuant to the directions issued by the High Court. That thereafter, on conclusion of the investigation, the accused persons have been chargesheeted. Therefore, the High Court has erred in observing at this stage that the initiation of the criminal proceedings/proceedings is malicious. Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial. In any case, at this stage, what

is required to be considered is a prima facie case and the material collected during the course of the investigation, which warranted the accused to be tried.” (Emphasis supplied)

It is submitted by the learned Spl. P.P. that therein the Hon’ble Supreme Court of India has in no uncertain manner has laid down the law that whether the criminal proceeding was malicious or not is not required to be considered at the stage of cognizance and the same is required to be considered at the conclusion of the trial.

10. Learned Special Public Prosecutor, so far as the contention of the petitioner, relying upon Section 22 of Bharatiya Sakshya Adhiniyam, 2023 that any confession to a police officer is inadmissible is concerned, submits that Section 22 of the Bharatiya Sakshya Adhiniyam, 2023 cannot be read in isolation but it has to be read in conjunction with Section 24 which reads as under:-

“22. Confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceeding. – A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat, coercion or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him:

Provided that if the confession is made after the impression caused by any such inducement, threat, coercion or promise has, in the opinion of the Court, been fully removed, it is relevant:

Provided further that if such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

24. Consideration of proved confession affecting person making it and others jointly under trial for same offence.. –

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Explanation I. – “Offence”, as used in this section, includes the abetment of, or attempt to commit, the offence.

Explanation II. – A trial of more persons than one held in the absence of the accused who has absconded or who fails to comply with a proclamation issued under Section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023 shall be deemed to be a joint trial for the purpose of this section.” (Emphasis supplied)

And submits that therein in no uncertain manner has been laid down that when more persons than one are being tried jointly for the same offence and the confession made by one of such persons affecting himself or some other of the persons is proved, the court may take into consideration such confession as against such other persons as well as against the person who makes such confession. So, at the stage of taking cognizance, the Magistrate is not expected to deal with the matter to discard the charge sheet merely on the ground that the materials in the record also includes the confessional statement of the co-accused. It is next submitted that this is a case where admittedly materials are there against some of the accused persons of the case but the petitioner says that there is no material against the petitioner. Under such circumstances, the Magistrate can consider such plea at the time of framing of charge but taking cognizance on the basis of Police Report is not the stage to add or subtract any penal provision of law other than the ones mentioned in the charge sheet by the police. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

11. Having heard the submissions made at the Bar and after going through the materials available in the record, it is pertinent to mention here that it is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **State of Gujarat Vs. Afroz Mohammed Hasanfatta**, reported in (2019) 20 SCC 539 para -23 of which reads as under:-

"23. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the investigating officer and thereafter, charge-sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190(1)(b) CrPC, where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon subject to satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge-sheet is barred by law or where there is lack of jurisdiction or when the charge-sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge-sheet and for not taking it on file."
(Emphasis supplied)

That in case of taking cognizance of an offence based upon the Police Report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the

Magistrate is only required to pass an order issuing summons to the accused.

12. It is also a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **State of Gujarat Vs. Girish Radhakrishnan Varde**, reported in **(2014) 3 SCC 659**, para -15 of which reads as under:-

"15. The question, therefore, emerges as to whether the complainant/informant/prosecution would be precluded from seeking a remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the prosecution cannot be allowed to suffer prejudice by ignoring exclusion of the sections which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offences into the charge-sheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this lacunae can be allowed to be filled in by the Magistrate before whom the matter comes up for taking cognizance after submission of the charge-sheet and as already stated, the Magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge under Sections 216, 218 or under Section 228 CrPC as the case may be which means that after submission of the charge-sheet it will be open for the prosecution to contend before the appropriate trial court at the stage of framing of charge to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. Simultaneously, the accused also has the liberty at this stage to submit whether the charge under a particular provision should be framed or not and this is the appropriate forum in a case based on police report to determine whether the charge can be framed and a particular section can be added or removed depending upon the material collected during investigation as also the facts disclosed in the FIR and the charge-sheet." (Emphasis supplied)

Wherein the Hon'ble Supreme Court of India has categorically laid down the law that the Magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking

cognizance as the same would be permissible by the trial court only at the time of framing of the charge.

13. Now coming to the facts of the case, the undisputed fact remains that the petitioner is not named in the F.I.R. but during the investigation of the case, the name of the petitioner has transpired. In the charge sheet at serial no.15 at internal page no.20 and 21 of the charge sheet, the column relating to the petitioner has been filled up as per the format prescribed by law and all the columns have been duly filled up by the investigating officer. The charge sheet submitted was accompanied by the case diary of the case and the same has also been submitted by the police along with the charge sheet.

14. So far as the impugned order dated 12.11.2025, passed in connection with G.R. Case No. 3506 of 2025(S) is concerned, the same has reference to the order dated 07.12.2021 where cognizance of the offences were already taken by the court concerned in the same case. The petitioner has not challenged the order taking cognizance dated 07.12.2021. The need for drawing up of the impugned order dated 12.11.2025 in the said case arose because of the supplementary charge sheet being filed *inter alia* against some more accused persons named in column 11 of the charge sheet. The learned Judicial Magistrate -1st Class, Dhanbad has considered that cognizance has already been taken and upon perusal of the materials in the record, it formed the opinion that there are sufficient ground for proceeding further against the accused including the petitioner as well and considering the same issued summons to the accused persons of the

case. It is the admitted case of the petitioner that charge has yet to be framed in this case.

15. Under such circumstances, since the Magistrate has acted upon a supplementary charge sheet based upon Police Report which is supported by the case diary and the case diary is not before this Court, this Court do not find any illegality in the order impugned before this Court warranting interference by this Court in exercise of its power under Section 528 of the B.N.S.S., 2023.
16. Accordingly, this criminal miscellaneous petition being without of any merit is dismissed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 22nd April, 2026
AFR/Sonu-

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