

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1566 of 2023

1. Tanweer Ahmad @ Tanveer Ahmad, aged about 35 years, s/o late Dr. Mustaque Ahmad
 2. Farha Shahin @ Farha, aged about 30 years, w/o Tarique Ahmad Olai
 3. Shirin Shahin @ Shireen Shahin, aged about 30 years, w/o late Shakib Usmani
 4. Tarique Ahmad Olayee @ Tarique Ahmad @ Tarique Ahmad Olai @ TariquOlayee
- Petitioner no.1 to 4 are r/o Karim Manzil, Sattar Colony Road, Bariatu, P.O. & P.S.-Bariatu, Dist.-Ranchi
5. Syed Mohammad Wasim @ S.M. Wasim, aged about 55 years, s/o late S.M. Halim, r/o Nishat House, Haroon Nagar II, P.O. & P.S.-Phulwari Sharif, Dist.-Patna (Bihar)
 6. Nilofar Ahmad @ Nilofar, aged about 54 years, w/o Mustaque Ahmad, r/o Arvindo Nagar, Doranda, P.O. & P.S.-Doranda, Dist.-Ranchi

....Petitioners

Versus

1. The State of Jharkhand
2. Syed Jawed Parvez, aged about 62 years, s/o late Syed Mohammad Karim, r/o Karim Manzil, Sattar Colony Road, Bariatu, P.O. & P.S.-Bariatu, Dist.-Ranchi

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

.....

For the Petitioners

: Mr. Pratik Sen, Advocate

: Mr. Amit Sinha, Advocate

For the State

: Mr. S.K. Tiwari, Spl.P.P.

For O.P. No.2

: Mr. Amrit Raj Kisku, Advocate

: Ms. Sweety Topno, Advocate

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By the Court:-

I.A. No. 13197 of 2025

1. Heard the parties.
2. This interlocutory application has been filed with the prayer for early hearing of this criminal miscellaneous petition.
3. Since, hearing of this criminal miscellaneous petition is taken up today, hence, this interlocutory application is disposed of being infructuous.

(Anil Kumar Choudhary, J.)

Cr.M.P. No. 1566 of 2023

1. Heard the parties.
2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 of Cr.P.C. with the prayer to quash the order taking cognizance dated 17.02.2023 with all consequences in connection with Complaint Case No. 6481 of 2022 pending in the court of Judicial Magistrate 1st Class, Ranchi.
3. The brief fact of the case is that the mother of the petitioner no.1 is the sister of the complainant. The complainant gifted 5.5 decimals of land to the mother of the petitioner no.1, who is the co-accused but during the pendency of this case she has died. The allegation against the mother of the petitioner no.1 is that she encroached upon the other land of the complainant and constructed a house without the approval of the plan of the

building by the competent authority. On 09.09.2021 the complainant was assaulted. There is further allegation that the mother of the petitioner no.1, during her lifetime, has forged some documents and made the said 5.5 decimals of land gifted to her by the complainant, to be 16 decimals and was trying to sell the land of the complainant and on 10.07.2022 the accused persons of the case attacked the complainant by putting a knife at his throat and told that they will usurp the 16 decimals land of the complainant and will throw him after killing him and outraged modesty of the wife of 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 Judicial Magistrate 1st Class, Ranchi found *prima facie* case for the offences punishable under Sections 406, 323 and 341 of Indian Penal Code and the learned counsel for the petitioner submits that charge has not yet been framed in the said Complaint Case No. 6481 of 2022 and the case has been fixed to 18.10.2025 for consideration of framing of charge.
5. Learned counsel for the petitioners relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Madhushree Datta vs. The State of Karnataka & Anr.** reported in **2025 INSC 105** and submits that in the facts of that case when the complainant merely stated that the complainant was forcibly ejected from the company's office by security personnel, who allegedly attempted to assault, physically harass and threaten her

with dire consequences, the Hon'ble Supreme Court of India observed that the complaint does not directly attribute any voluntary act of causing hurt to the complainant by any of the two accused of that case and went on to hold that the offence punishable under Section 323 of Indian Penal Code is not made out.

6. Learned counsel for the petitioners next relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Abhishek Saxena vs. The State of Uttar Pradesh & Anr.** reported in **2023 INSC 1088** wherein, in the facts of that case except the statement that "they beat up me" by the complainant, no material was available in the record in regard to the commission of the offence and it was held by the Hon'ble Supreme Court of India that the basic ingredients to constitute the offence under Section 323 of Indian Penal Code is lacking in that case.
7. Learned counsel for the petitioners also relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Usha Chakraborty & Anr. vs. State of West Bengal & Anr.** reported in **2023 LiveLaw (SC) 67** and submits that in paragraph no. 11 it has been observed by the Hon'ble Supreme Court of India that in that case as in respect of the issue involved which was of civil nature, the respondent had already approached the jurisdictional civil court by instituting a civil suit and it was pending, there can be no doubt with respect to the fact that the attempt on the part of the respondent is to use the criminal

proceedings as weapon of harassment against the appellants of that case.

8. Learned counsel for the petitioners further relies upon the judgment of this Court in the case of **Sandhya Bhagat & Anr. vs. The State of Jharkhand & Anr.** in Cr.M.P. No. 1550 of 2023 dated 28.08.2023 wherein, considering the facts of that case, this Court observed that the allegation regarding the offences punishable under Sections 341 and 323 of Indian Penal Code has been made ornamentally to make the case a serious one. It is next submitted by the learned counsel for the petitioners that the complainant-opposite party no.2 has not approached the learned Judicial Magistrate 1st Class, Ranchi with clean hands, by suppressing the fact that prior to institution of the complaint case, the complainant filed Original Suit No. 220 of 2022 against the mother of the petitioner no.1 in the court of Civil Judge (Junior Division)-I, Ranchi. It is further submitted by the learned counsel for the petitioners that the dispute between the parties is basically a civil dispute and there is no allegation of entrustment of any property against the petitioners and in the absence of the same, the offence punishable under Section 406 of Indian Penal Code is not made out. Hence, it is submitted that the prayer as prayed for in this criminal miscellaneous petition be allowed.
9. Learned Special Public Prosecutor and the learned counsel for the opposite party no.2 on the other hand vehemently opposes the prayer and submits that the allegation made in the complaint,

statement of the complainant on solemn affirmation and the statement of the inquiry witnesses are sufficient to constitute the offence punishable under Sections 406, 323 and 341 of Indian Penal Code. Learned counsel for the opposite party no.2 relies upon the judgment of the Hon'ble Supreme Court of India in the case of **S.N. Vijayalakshmi & Ors. vs. State of Karnataka & Anr.** reported in **2025 SCC OnLine SC 1575** and submits that in paragraph no. 42, the Hon'ble Supreme Court of India has reiterated the settled principle of law that there is no bar to simultaneous civil and criminal proceedings and if the element of criminality is there, a civil case can co-exist with a criminal case on the same facts and the fact of the civil remedy has already been availed of by the complainant *ipso facto*, is not sufficient ground to quash an FIR. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

10. Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that in the statement on solemn affirmation the complainant has stated in paragraph no.3 that on 09.09.2021 all the petitioners attacked him and assaulted him but he has contradicted the same in paragraph no.11 by telling that the occurrences took place with him on 02.09.2021, 06.09.2021 and 10.07.2022 but did not specifically state any occurrence taking place on 09.09.2021. Further, there is no allegation against any of the petitioners of committing any specific act or omission and the allegations

against them are basically general and omnibus in nature and the facts and circumstances of this case indicates that because of the admitted civil dispute between the parties, of course which was suppressed in the complainant, this criminal case has been instituted as a weapon of harassment to the petitioners.

11. So far as the offence punishable under Section 406 of Indian Penal Code is concerned, there is absolutely no allegation against any of the petitioners of entrustment of any property nor there is any allegation of any dishonest misappropriation of any entrusted property. In the absence of the same, this Court has no hesitation in holding that even if the entire allegations are considered to be true in their entirety, still the offence punishable under Section 406 of Indian Penal Code is not made out.
12. So far as the offence punishable under Section 323 and 341 of Indian Penal Code are concerned, there is no specific act of omission or commission attributed to any of the petitioners nor there is any specific date except 09.09.2021 as mentioned in paragraph no. 3 of the statement on solemn affirmation of the complainant but as already indicated above, the same has been contradicted in paragraph no.6 of the same statement on solemn affirmation. Further though in paragraph no. 8 of the plaint of Original Suit No. 220 of 2022, the complainant has mentioned that on 02.09.2021 some of the petitioners misbehaved to the complainant and manhandled him and quarreled with him but there is no reference of any occurrence which took place on

09.09.2021 though the said Original Suit No. 220 of 2022 was filed on 09.05.2022 before filing this complaint on 22.07.2022. Further, there is an inordinate delay of about 10 months in filing the complaint for a simple occurrence of assault and wrongful restraint which allegedly took place on 09.09.2021.

13. Under such circumstances, this Court is of the considered view that continuation of the criminal proceeding against the petitioners will amount to abuse of process of law and this is a fit case where the order taking cognizance dated 17.02.2023 with all consequences in connection with Complaint Case No. 6481 of 2022 be quashed and set aside qua the petitioners.
14. Accordingly, the order taking cognizance dated 17.02.2023 with all consequences in connection with Complaint Case No. 6481 of 2022 is quashed and set aside qua the petitioners.
15. In the result, this criminal miscellaneous petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 7th October, 2025
AFR/Sonu-Gunjan/-

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