

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr.M.P. No. 2106 of 2019

Raj Kumar Sao @ Raj Kumar Soni @ Raj Kumar, aged about 37 years, son of Late Somar Sao, resident of Nutan Nagar Chowk, P.O- Nutan Nagar, P.S.- Muffasil, Hazaribagh, Dist.- Hazariabgh Petitioner

Versus

1. The State of Jharkhand
2. Sanjeev Kumar Mishra, son of Late Dhermi Kumar Mishra, resident of Gandhi Maidan, Matwari, P.O.- Hazaribag, P.S.- Sadar, Dist.- Hazaribagh
..... Opposite Parties

For the Petitioner	: Mr. Jyoti Pd. Sinha, Adv.
For the State	: Mr. Vinay Kr. Tiwary , Addl. PP
For the O.P. No. 2	: Mr. Rishi Pallav , Adv.

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 CrPC with the prayer for quashing and setting aside the order dated 02.05.2019 passed in Cr. Rev. No. 35 of 2019 by learned Sessions Judge, Hazaribagh as well as the order dated 06.03.2019 passed in Misc. Case no. 01 of 2017 arising out of Sadar P.S. Case no. 856 of 2012.
3. The brief fact of the case is that Sadar P.S. Case no. 856 of 2012 was registered in connection of the offence of theft of Rs. 4,00,000/- from the house of the victim- Sanjeev Kumar Mishra and petitioner was accused in that case and during investigation of the case, police recovered Rs. 3,26,000/- of the stolen money and during the pendency of the trial, learned court passed an order for release of the said seized amount in favour of Sanjeev Kumar Mishra being the victim of the case. The said order for release of money in favour of Sanjeev Kumar Mishra has never been challenged by the petitioner.
4. It is the case of the victim, who is the opposite party no. 2 of this petition that since he was unaware about the order for release of

Rs. 3,26,000/- in his favour, hence, he has not received the cash. Later on, the petitioner, who is one of the accused persons of the case; the other accused persons of the case being Karma Turi and Binod Soni, filed a petition on 10.01.2017 claiming that the amount of Rs. 3,26,000/- recovered from him is his money which was paid to him by one Dilchand Gupta, after entering into an agreement with him to purchase the land of the petitioner for Rs. 3,50,000/-. Learned CJM, conducted an inquiry and in the inquiry, Dilchand Gupta stated that he gave Rs. 3,50,000/- in cash to the petitioner with, currency of notes of denomination of Rs.1,000/-, Rs.500/- and Rs. 100/- but the witness of the petitioner namely Santosh Kumar has stated that the currency notes of only Rs. 1,000/- and Rs. 500/- denomination was given by Dilchand Gupta to the petitioner. Learned trial court also considered the confessional statement of the petitioner, appearing in paragraph 73 of the case diary that he along with Karma Turi trespassed to the house of Sanjeev Kumar Mishra in the night of 21.10.2012 and committed theft of cash of Rs. 4,00,000/-, Sony Handicam, Sony DVD, mobile phone and other articles and as per their mutual understanding, the petitioner kept the stolen property of cash of Rupees 4,00,000/-, mobile phone and Handicam with him while Karma Turi took away saari, DVD and jewellery and Karma Turi, after 10 to 15 days sold the stolen jewellery to Vaishnav Jewellery and received a cash of Rs. 1,40,000/- from that Jewellery shop and both of them divided total money equally. The petitioner further confessed that he spent Rs. 3,00,000/- received from Dilchand Gupta at the time of agreement for selling of his land to Dilchand Gupta along with the stolen cash which he received from the offence of theft, in constructing his house. So, the learned Chief Judicial Magistrate considered that, there was discrepancy in the confessional statement and in the agreement; because though in his confessional statement the petitioner claimed that he received Rs.3,00,00/- from Dilchand Gupta but the agreement which was produced during the inquiry was to the effect that the petitioner

- received Rs. 3,50,000/-. On the other hand during the enquiry Sanjeev Kumar Mishra examined himself as witness and also examined one Sanjay Kumar Pandey and both of them have deposed regarding Commission of theft of Rs. 4,00,000/- cash from the house of victim on 21.10.2012. After the TIP of Sanjeev Kumar Mishra, release order of the articles, part of which was recovered from the house of the petitioner also, were passed in favour of Sanjeev Kumar Mishra and as per the statement of Sanjeev Kumar Mishra, 200 pieces of currency notes of Rs. 1000/- denomination, 251 notes of Rs. 500/- denomination and 51 notes of RS 100/- denomination were recovered from the house of the petitioner and the petitioner has stated that he has spent the rest amount. After taking into consideration the materials in the record, learned CJM, Hazaribagh came to the conclusion that the petitioner could not establish that cash of Rs. 3,50,000/- seized from his possession, was his own money and not the money stolen from the house of Sanjeev Kumar Mishra. Thus, as the petitioner failed to establish that he is the lawful owner of the seized cash, learned CJM rejected the prayer for release of the said amount in favour of the petitioner and being aggrieved by the said order, the petitioner filed Criminal Revision no. 35 of 2019 in the court of learned Sessions Judge, Hazaribagh and the same was heard and disposed of by learned Sessions Judge, Hazaribagh.
5. Learned Sessions Judge, Hazaribagh considered that in exercise of revisional jurisdiction, the revisional court cannot re-appreciate the evidence available in the record and the court has only to satisfy itself as to the correctness, legality or propriety of any of the order. It also considered that the undisputed fact remains that the petitioner confessed before the police about the commission of the offence which led to recovery of Rs. 3,26,000/- from his house and the order for release of the said amount has already been passed in favour of Sanjeev Kumar Mishra being the opposite party no. 2 herein who is the victim of the case, concurring with the finding of learned CJM that the petitioner could not establish

the ownership of cash of Rs. 3,26,000/- and without finding any illegality or impropriety in the order impugned before it, dismissed the criminal revision.

6. It is submitted by learned counsel for the petitioner that the petitioner is not named in the FIR of the concerned case of theft from the Jewellery house by committing lurking house trespass by night in order to commit the offences punishable under Sections 457 /380 of the IPC in which case, later on the offence punishable under Section 411 of IPC was also added. It is next submitted by learned counsel for the petitioner that learned court below failed to consider all the six witnesses during the trial in connection with Sadar P.S. case no. 856 of 2012, wherein they have stated that they have not seen the commission of theft being committed by the petitioner or anyone else, hence the petitioner was acquitted in that case along with the Co-accused persons vide the judgment dated 26.11.2016. It is next submitted that learned CJM, Hazaribagh without appreciating the document and evidence, dismissed the petition on the basis of conjecture and surmise. It is next submitted that learned court below failed to consider that even confession before the police by the petitioner has no evidentiary value in the eyes of law. It is next submitted that the Test Identification Parade of the cash amount was not held at any point of time during the investigation, hence, it is submitted that the prayer as made in this criminal miscellaneous petition be allowed.
7. Learned Addl. PP and learned counsel for the Opp. Party no. 2, on the other hand, vehemently oppose the prayer of the petitioner and by drawing attention of the court to the judgment passed by learned Chief Judicial Magistrate, Hazaribagh in G.R. case no. 4121 of 2012 corresponding to Sadar PS case no. 856 of 2012 it is submitted that during said trial, the petitioner never took the plea in his statement recorded under section 313 of CrPC, that the stolen articles were his property nor he adduced any defence evidence during the trial to claim that the stolen property

recovered during the investigation of the case, belongs to him and no such suggestion was given to any of the witnesses of the prosecution who supported the case of theft and having not done so, the after- thought of the petitioner of making a concoction of an agreement Rs. 3,50,000/- having been paid by Dil Chand Gupta to the petitioner; is contrary to his statement made before the police and which was supplied to the petitioner along with the police paper and the petitioner was very much aware about the said Rs. 3,00,000/- having been paid by Dilchand Gupta.

8. It is next submitted that the trial court has accepted the fact of Commission of theft in the House of the opposite party number 2 herein and theft of cash and other articles but it has acquitted the accused person because no evidence could be put forth by the prosecution to establish that it is the petitioner who has committed the theft. Hence, it is submitted that the offence punishable under Section 411 of IPC was against the Co-accused Binod Soni whereas the allegation of theft was directly against the petitioner and Karma Turi. It is also submitted that the petitioner has never challenged the order for release of Rs. 3,26,000/- in favour of the Sanjeev Kumar Mishra being the victim- opposite party no. 2 hence, no illegality has been committed either by learned CJM or by learned Sessions Judge, Hazaribagh in arriving at the conclusion that the petitioner could not establish the ownership of cash of Rs. 3,26,000/- recovered during the pendency of the case. Hence, it is submitted that this Criminal Miscellaneous Petition being without any merit, be dismissed.
9. Having heard the submissions made at the Bar and after going through materials available in the record, this court finds after going through the judgment passed by learned CJM, Hazaribagh in G.R. case no. 4121 of 2012 dated 26.11.2016 that it was never the case of petitioner during the trial of the case that the Rs. 3,26,000/- which was recovered being the stolen property of the case, from the house of the petitioner belongs to him and he has not stated so in his statement under Section 313 of CrPC, nor he has put any

such suggestion to any of the accused persons of the case including the I.O. of the case. The petitioner also has not adduced any evidence in his defence that the stolen property of the case, recovered from his house, belongs to him and is not the stolen property. In the enquiry, there was discrepancy regarding the denomination of notes given by Dilchand Gupta to the petitioner, as already indicated above in the foregoing paragraphs of this judgment. The petitioner never challenged the order for release of the cash of Rs. 3,26,000/- passed in favour of the Opp. Party no. 2 herein, who is the victim of the case during the pendency of the trial, so that order has already attained finality and on any day subsequent to the said order, also the said order has not been challenged.

10. Under such facts of the case, this Court is of the considered view that there is no illegality or impropriety committed either by learned CJM, Hazaribagh or by learned Sessions Judge, Hazaribagh in passing the order impugned in this Criminal Miscellaneous Petition.
11. Accordingly, there being no justifiable reason to accede to the prayer made in this Criminal Miscellaneous Petition in exercise of its power under section 482 of CrPC; this court is of the considered view that this is not a fit case where the prayer as made in this Criminal Miscellaneous Petition by the petitioner to be acceded in exercise of its power under Section 482 of CrPC.
12. Accordingly, this Criminal Miscellaneous Petition being without any merit is dismissed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated, the 21st April, 2026
Smita / AFR

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