

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.2687 of 2022

1. Surya Narayan Tiwary @ Suryanarayan Tiwari, aged about 72 years, son of Late Madhav Tiwari;
 2. Anugrah Narayan Tiwary @ Anugarh Narayan Tiwari, aged about 65 years, son of Suryanarayan Tiwari;
 3. Navneet Ranjan Tiwary @ Navneet Ranjan @ Navnit Ranjan Tiwari, aged about 25 years, son of Anugarh Narayan Tiwari;
- All are residents of Ornar, Chainpur, P.O. and P.S.-Chainpur, District-Palamau.

... Petitioners

Versus

1. The State of Jharkhand, and
2. Bijay Kumar Tiwari, S/o Lt. Ragunandan Tiwari, R/o Village Ornar, P.S.-Chainpur, District-Palamau.

... Opposite Parties

For the Petitioners	: Mrs. Jasvindar Mazumdar, Advocate
	: Mr. Rohan Mazumdar, Advocate
For the State	: Mrs. Nehala Sharmin, Spl.P.P.
For the O.P. No.2	: Mr. J.P. Jha, Sr.Advocate
	: Mr. Aishwarya Prakash, Advocate

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 the Code of Criminal Procedure with a prayer to quash and set aside the entire criminal proceeding including the order dated 19.07.2022 passed in connection with Chainpur P.S. Case No.264 of 2021 corresponding to G.R. Case No.950 of 2022 by learned Sub-

Divisional Judicial Magistrate, Palamau at Daltonganj whereby and where under the learned Sub-Divisional Judicial Magistrate, Palamau at Daltonganj has taken cognizance for the offences punishable under Sections 341, 342, 323, 324, 325, 307, 504/34 of the Indian Penal Code and has found *prima facie* case against the petitioners.

3. At the outset, learned counsel for the petitioner submits that the petitioner abandons all other prayers and confines his prayer to only quash the portion of the order dated 19.07.2022 passed by the learned Sub-Divisional Judicial Magistrate, Palamau at Daltonganj in connection with Chainpur P.S. Case No.264 of 2021 corresponding to G.R. Case No.950 of 2022, so far as it relates to offence punishable under Section 307 of the Indian Penal Code is concerned. The learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court of India in the case of **State of Gujarat vs. Girish Radhakrishnan Varde** reported in (2014) 3 SCC 659, paragraph-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)

and submits that therein the Hon'ble Supreme Court of India has categorically laid down the law that if the investigating authority for any reason whatsoever has failed to include all the offences into the charge sheet based on the FIR on which investigation had been conducted, the Magistrate before whom the matter comes up for taking cognizance after submission of the charge sheet cannot fill up the lacuna and 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 at the time of framing of the charge under Section 216, 218 or under Section 228 of Cr.P.C. as the case may be and the only remedy available to the prosecution after submission of the charge sheet is 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 section which according to the prosecution should be framed can be allowed to the facts. It is then submitted that, therefore, the learned Magistrate has committed a grave error in taking cognizance of the offence punishable under Section 307 of the Indian Penal Code as well, hence, it is submitted that the modified prayer of the petitioner as mentioned above, be allowed.

4. Learned Spl.P.P. appearing for the State and the learned senior counsel for the opposite party No.2 on the other hand vehemently oppose the prayer of the petitioner made in the instant Cr.M.P. The learned senior counsel for the opposite party no.2 relies upon the judgement of the Hon'ble Supreme Court of India in the case of **Jagdish Ram vs. State of Rajasthan and Another** reported in (2004) 4 SCC 432, and submits that in para-10 thereof the Hon'ble Supreme Court of India has observed that at the stage of taking cognizance, the Magistrate has only to decide whether sufficient ground exist or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if material on record makes out a case for the said purpose, hence, it is submitted that since a Magistrate is empowered to take cognizance of any offence, if material on record makes out a case, so the corollary is that, the same includes the power being vested upon the Magistrate to take cognizance of offences, other than the offences for which the charge sheet has been submitted against the petitioner and in this case as by a well written order, the Magistrate has taken cognizance of the offence punishable under Section 307 of the Indian Penal Code as well, hence, it is submitted that this Cr.M.P., being without any merit, be dismissed.

5. 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 in view of the authoritative pronouncement of the Hon'ble Supreme Court of India in the case of **State of Gujarat vs. Girish Radhakrishnan Varde** reported in (2014) 3 SCC 659 (supra), as has already mentioned in the foregoing paragraphs of the judgment, this Court has no hesitation in holding that the Magistrate can differ from the Final

Form submitted by the police in a case; if an accused is not sent up for trial and can take cognizance against the accused but he doesn't have any power at the stage of taking cognizance to add or subtract penal section of any offence, in respect of which the charge sheet has been submitted at the time of taking cognizance, of course he can do so at the time of framing of charge.

6. Considering the aforesaid facts, this Court is of the considered view that the order dated 19.07.2022 passed in connection with Chainpur P.S. Case No.264 of 2021 corresponding to G.R. Case No.950 of 2022 by learned Sub-Divisional Judicial Magistrate, Palamau at Daltonganj, so far it relates to taking cognizance of the offence punishable under Section 307 of the Indian Penal Code passed in connection with Chainpur P.S. Case No.264 of 2021 corresponding to G.R. Case No.950 of 2022 is not sustainable in law. Accordingly, the said for portion of the impugned order is quashed and set aside while maintaining the remaining portion of the order dated 19.07.2022 passed in connection with Chainpur P.S. Case No.264 of 2021 corresponding to G.R. Case No.950 of 2022 by learned Sub-Divisional Judicial Magistrate, Palamau at Daltonganj.

7. In the result, this Cr.M.P., stands allowed only to the aforesaid extent.

8. In view of disposal of the instant Cr.M.P., the interim relief granted vide order dated 12.09.2022, is vacated.

(Anil Kumar Choudhary, J.)