

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.2752 of 2023

Md. Ramjan Khan @ Ram Jan Khan, aged about 45 years, son of
Bechan Khan, Resident of Village- Sisai, Post Office- Kotam, Police
Station & District- Gumla ... Petitioner

Versus

The State of Jharkhand ... Opposite Party

For the Petitioner : Mr. Ritesh Kumar, Advocate
Mr. Gaurav, Advocate
For the State : Ms. Nehala Sharmin, Spl.P.P. (Through V.C.)

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, 1973 with the prayer to quash the entire criminal proceeding including the F.I.R. as well as the order taking cognizance dated 01.04.2023 passed by the learned Additional Chief Judicial Magistrate, Gumla in connection with Palkot P.S. Case No.62 of 2022 corresponding to G.R. Case No.200 of 2023 of the court of learned Additional Chief Judicial Magistrate, Gumla.

3. The brief fact of the case is that the petitioner was involved in commission of theft of sand from the bank of river Marda of village Tikul Marda under Bagesera Panchayat from the southern ghat of the said river. The District Mining Officer seized the tractor of the petitioner and submitted a written-report alleging commission of theft of sand and that the petitioner dishonestly receiving the stolen sand. On the

basis of the written-report submitted by the informant, police registered Palkot P.S. Case No.62 of 2022 and took up the investigation of the case. After completion of the investigation, police found the allegations against the petitioner to be true and submitted charge-sheet against the petitioner for having committed the offences punishable under Section 379, 411/34 of the Indian Penal Code as well as Section 54 of the Jharkhand Minor Minerals (Amendment) Act, Section 21 of the Mines and Minerals (Development & Regulation) Act, 1957 and Rule 13 of the Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017. On the basis of the charge-sheet submitted, the learned Additional Chief Judicial Magistrate, Gumla took cognizance of the said offences.

4. Learned counsel for the petitioner submits that the allegation against the petitioner is false. It is next submitted that the tractor of the petitioner was seized without there being any sand loaded upon it and the trailer attached to the tractor could not be brought out from the river in spite of the efforts of the concerned persons. It is next submitted that there is a delay of four days in lodging of the F.I.R. and no explanation has been furnished for the same. It is further submitted that the tractor of the petitioner was by the side of the river to get the tractor cleaned by washing it. Hence, it is submitted that the prayer, as prayed for in the instant Cr.M.P., be allowed.

5. Learned Spl.P.P. appearing for the State vehemently oppose the prayer of the petitioner made in the instant Cr.M.P. and submits that the only contention of the petitioner is that the allegations against him are false which can at best be a defence of the petitioner which the

petitioner is free to take during the trial of the case but certainly the same is not a ground to quash the entire criminal proceeding. It is next submitted that the undisputed fact remains that if the allegations made in the F.I.R, charge-sheet and the case-diary are considered to be true in their entirety then the offence punishable under Sections 379 and 411 of the Indian Penal Code are made out against the petitioner. Hence, it is submitted that this Cr.M.P., being without any merit, be dismissed.

6. 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 an accused person of the case and the veracity of the evidence put forth by the accused cannot be considered in exercise of the power under Section 482 of the Code of Criminal Procedure, 1973 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 & Others** reported in **2004 2 Supreme 501**.

7. It is also a settled principle of law that no mini trial can be conducted by the High Court in exercise of the power under Section 482 of Code of Criminal Procedure to get into the appreciation of the evidence of the particular case as has been reiterated by the Hon'ble Supreme Court of India in the case of **State of Uttar Pradesh & Another vs. Akhil Sharda & Others** reported in **2022 SCC OnLine SC 820** 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)

8. Now, coming to the facts of the case; there is direct and specific allegation against the petitioner that the petitioner committed theft of sand from the bank of river- Marda and received the stolen property. The allegation against the petitioner was found to be true during the investigation of the case and after completion of the investigation, police submitted charge-sheet against the petitioner and basing upon the same, the learned Additional Chief Judicial Magistrate, Gumla has taken cognizance of the offences as already indicated above. The undisputed fact remains that if the allegations made in the F.I.R, charge-sheet and the case-diary are considered to be true, the offences punishable under Sections 379 and 411 of the Indian Penal Code are made out against the petitioner.

9. Considering the aforesaid facts, this Court is of the considered view that this is not a fit case where the prayer of the petitioner is to be acceded in exercise of the power under Section 482 of the Code of Criminal Procedure, 1973.

10. Accordingly, this Cr.M.P., being without any merit, is dismissed.

(Anil Kumar Choudhary, J.)