

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 3397 of 2025

Krishna Kant Sinha (Fouji) @ Krishna Kant, s/o Satyanarayan Sinha,
aged about 42 years, r/o Sobhanpur Bhatta, P.O.-Sahibganj, P.S.-
Muffasil, Dist.-Sahibganj, Jharkhand

.... 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. Piyush Kumar Roy, Advocate
For the State : Mr. Subodh Kumar Dubey, Addl. P.P.

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By the Court:-

I.A. No.8369 of 2026

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. 3397 of 2025

1. Heard the parties.
2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of B.N.S.S., 2023 with the prayer to quash and set aside the entire criminal proceeding initiated against the petitioner including the order dated

24.01.2025 passed by the learned Additional Chief Judicial Magistrate, Sahibganj in connection with Muffasil P.S. Case No. 58 of 2022, corresponding to G.R. No. 11 of 2025 whereby and where under, though charge sheet has been submitted by the police after investigation of the case against the petitioner for having committed the offence punishable under Section 307 of the Indian Penal Code and under Section 27 of Arms Act but the learned Additional Chief Judicial Magistrate, Sahibganj vide order dated 24.01.2025 has taken cognizance of the offence punishable under Section 323 of the Indian Penal Code and under Section 27 of Arms Act without any rhyme or reason differing with the charge sheet submitted by the police which is not in accordance with law. Hence, it is submitted that the prayer as prayed for by the petitioner in this criminal miscellaneous petition be allowed.

3. Learned Addl. P.P. submits that apparently because of printing error, instead of mentioning cognizance being taken under Section 307 of the Indian Penal Code inadvertently, it has been mentioned that cognizance has been taken under Section 323 of the Indian Penal Code so, the order of taking cognizance so far as it relates to the offence punishable under Section 323 of the Indian Penal Code be modified.
4. 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 as has been held by the Hon'ble Supreme Court of India in the case of **State of Gujarat v. Girish**

Radhakrishnan Varde reported in **(2014) 3 SCC 659**, paragraph no.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 laid down the law that if the investigating authorities for any reason whatsoever have failed to include all the offences in 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

lacunae 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 only at the time of framing of charge.

5. Now coming to the facts of the case, the undisputed fact remains that police after investigation of the case has submitted charge sheet against the petitioner for having committed the offences punishable under Section 307 of the Indian Penal Code and under Section 27 of the Arms Act. Without any rhyme or reason, since the learned Additional Chief Judicial Magistrate, Sahibganj has instead of taking cognizance of the offence punishable under Section 307 of the Indian Penal Code has taken cognizance in respect of the offence punishable under Section 323 of the Indian Penal Code, this Court has no hesitation in holding that so far as the impugned order dated 24.01.2025 passed by the learned Additional Chief Judicial Magistrate, Sahibganj in connection with Muffasil P.S. Case No. 58 of 2022, corresponding to G.R. No. 11 of 2025 in respect of the offence punishable under Section 323 of the Indian Penal Code is concerned, the same is not sustainable in law.
6. Accordingly, the portion of the impugned order dated 24.01.2025 passed by the learned Additional Chief Judicial Magistrate, Sahibganj in connection with Muffasil P.S. Case No. 58 of 2022, corresponding to G.R. No. 11 of 2025 so far as it relates to

cognizance of the offence punishable under Section 323 of the Indian Penal Code is quashed and set aside.

7. The learned Additional Chief Judicial Magistrate, Sahibganj is directed to pass a fresh order of cognizance in accordance with law.
8. In the result, this criminal miscellaneous petition is allowed to the aforesaid extent only.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 30th June, 2026
AFR/Gunjan/-

Uploaded on 02/07/2026