

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr.M.P. No. 426 of 2025

Ajay Rastogi, Male, aged about 56 years, son of Girish Nandan Rastogi, resident of B 67, Sector 51, Noida, P.O. & P.S.- Gautam Budh Nagar, Dist.- Gautam Budh Nagar, Uttar Pradesh-201301

Petitioner

Versus

The State of Jharkhand

..... Opposite Party

For the Petitioners : Mr. Sunil Kr. Agrawal, Adv.

For the State : Mr. P. K. Chatterjee, Spl. PP

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 528 of BNSS with the prayer of quashing and setting aside the order dated 05.01.2024 passed by learned JMFC, Garhwa in Kandi P.S. case no. 138 of 2018 corresponding to G.R.Case no. 247 of 2024 whereby and whereunder, learned Magistrate has taken cognizance of the offences punishable under section 406, 420, 120 B, 465 of IPC along with Rule 66C, 66D of IT Act and under section 13 of Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules 2017.
3. The undisputed fact remains that after investigation of the case, the police did not send up the petitioner, who is the named accused person of the case, for trial by mentioning that *inter alia* the petitioner is 'Anupreshit'. Learned Judicial Magistrate Garhwa was under the impression that the petitioner has been sent up for trial without being apprehended and on that erroneous impression, has taken cognizance of the offences.
4. It is submitted by learned counsel for the petitioner that in this case charge has not been framed and since no case is made out and the police did not send up the petitioner for

trial, learned Magistrate ought to have accepted the Final Report submitted by the police but under an erroneous impression that the petitioner has been sent up for trial, the learned Magistrate having taken cognizance, the same is not sustainable in law and the same is liable to be quashed and set aside.

5. Learned Spl. PP appearing for the State fairly submits that the petitioner has not been sent up for trial but apparently because of oversight, learned Judicial Magistrate has mentioned in the said impugned order dated 05.01.2024 in Kandi P.S. case no. 138 of 2018 corresponding to G. R. Case no. 247 of 2024, that the petitioner has been sent up without being apprehended by the police. It is further submitted that since otherwise also, the learned Magistrate has discussed in details about the materials available in the record, hence the case can be remanded to learned Magistrate to pass a fresh order.
6. Having heard the submissions made at the Bar and after going through materials available in the record, it is crystal clear from the Final Report submitted by the police that the petitioner has not been sent up for trial but in the impugned order, learned Magistrate has erroneously mentioned that the petitioner has been sent up for trial and went on to take cognizance of the offences; which is undoubtedly an error apparent on record. Hence, the order dated 05.01.2024 passed by learned JMFC, Garhwa in Kandi P.S. case no. 138 of 2018 corresponding to G. R. Case no. 247 of 2024 is not sustainable in law.
7. Accordingly, the order dated 05.01.2024 passed by learned JMFC, Garhwa in Kandi P.S. case no. 138 of 2018 corresponding to G.R. Case no. 247 of 2024 is quashed and set aside.
8. Learned JMFC, Garhwa is directed to pass a fresh order in accordance with law.

9. This Criminal Miscellaneous Petition is allowed to the
aforesaid extent.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated, the 9th April, 2026
Smita / AFR

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