

ITEM NO.3

COURT NO.6

SECTION IIA

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1547/2008

BIRENDRA PRASAD SAHU @ BIRENDRA PD &amp; ORS

Appellant(s)

VERSUS

STATE OF JHARKHAND &amp; ANR.

Respondent(s)

(with office report)

WITH

Crl.A. No. 1548/2008

(With Office Report)

Date : 10/03/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.K. AGRAWAL

HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Appellant(s) Mr. M. Larpaga Vinayagam, Sr. Adv.  
Mr. Jayesh Gaurav, Adv.  
Mr. T. Mahipal, Adv.

For Respondent(s) Mr. H. S. Parihar, Adv.

Mr. Ratan Kumar Choudhuri, Adv.

Mr. Krishnanand Pandeya, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The appeals are allowed, in terms of the signed order.

[O.P. SHARMA]  
COURT MASTER

[JASWINDER KAUR]  
COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1547 OF 2008

BIRENDRA PRASAD SAHU @ BIRENDRA PD & ORS Appellant(s)

VERSUS

STATE OF JHARKHAND & ANR. Respondent(s)

WITH

CRIMINAL APPEAL NO.1548 OF 2008

NEERAJ KUMAR & ORS Appellant(s)

VERSUS

STATE OF JHARKHAND & ANR. Respondent(s)

O R D E R

These appeals have been preferred against the order dated 15.2.2008 passed by the High Court of Jharkhand at Ranchi in Cri.M.P.No.246 of 2005 by which the High Court declined to quash the criminal proceedings arising out of the Complaint Case No.1092 of 1998 (T.R. No.73 OF 2005), pending before learned Sub-Divisional Judicial Magistrate, Giridh under Sections 147, 148, 149, 120B, 452, 323, 341, 342, 354, 380 and 384 of the Indian Penal Code. According to the complainant, 29 named and ten unknown persons attacked her shop and looted goods on 8.8.1995. The appellants were summoned against which they approached the High Court with a grievance that an earlier complaint in respect of same incidence had been dismissed and there was no extraordinary reason to entertain the second complaint which was merely to wreak vengeance. It was also pointed out that a petition for

quashing at the instance of some co-accused had been allowed on 25.7.2004. The High Court dismissed the petition with the observation that the second complaint was not barred.

We have heard learned counsel for the appellant and learned counsel for the State of Jharkhand. None appears for the complainant.

The only point which has been pressed by learned counsel for the appellant is that the High Court failed to consider that arising out of the same complaint, at the instance of the some of the accused, the High Court vide order dated 25.7.2004 in Cr.Misc.No.2044 of 1999 quashed the proceedings with the following observations:

"The first complaint was filed on 22.8.95 bearing complaint Case No.495/95 and the case was dropped on 29.8.95 and this complaint case has been filed on 17.10.98 and from perusal of complaint petition in fact on case of their involvement and participation in the occurrence is actually made out but at the enquiry stage AWs 1 and 2 have made specific allegation against the petitioners, and therefore, it can be said that since first case being Complaint Case No.495/95 was dropped on the petition of husband of the Complaint Case No.1092/95 on the ground that matter has been settled with the accused persons of complaint case no.495/95 and thereafter filing of this complaint by the wife of the complaint case No.495/95, so far as these petitioners are concerned, appears to be actuated with malice."

In case of the present appellants, the High Court was not justified in refusing to quash the proceedings. An anomalous situation has arisen when the very complaint stands quashed qua some of the accused while qua the other accused who are similarly placed, the complaint allowed to continue. We find merit in the submission.

Learned counsel for the State has not been able to dispute the above factual aspect that qua some of the accused, the complaint has been quashed by recording a finding that the complaint appeared to be actuated with malice which finding has become final while for others, the complaint has been directed to continue by the impugned order. Thus, the impugned order cannot be sustained.

In view of the above factual situation, we allow these appeals, set aside the impugned order and quash the proceedings in complaint case mentioned above.

.....J.  
(R.K. AGRAWAL)

.....J.  
(ADARSH KUMAR GOEL)

NEW DELHI;  
MARCH 10, 2015