

**IN THE HIGH COURT OF JHARKHAND, RANCHI**

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**W.P.(Cr.) No. 52 of 2021**

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Sanjay Kumar Mohanty, aged about 41 years, son of Bholanath Mahanty,  
resident of Hirajungle, Near Mangalam City, Adityapur, PO and PS  
Adityapur, District Seraikella Kharsawan ..... Petitioner

-- Versus --

1.The State of Jharkhand, through the Superintendent of Police,  
Seraikella-Kharsawan, PO+PS+District-Seraikella Kharsawan

2.Station-In-Charge, Adityapur Police Station, PO and PS Adityapur  
District –Seraikella Kharsawan

3.Investigating Officer, Adityapur Police Station, PO and PS Adityapur,  
District-Seraikella Kharsawan ..... Opposite Parties

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**CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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For the Petitioner :- Mr. Amritansh Vats, Advocate

For the State :- Mrs. Niki Sinha, Spl.PP

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**6/06.09.2021** Heard Mr. Amritansh Vats, the learned counsel appearing on behalf of the petitioner and Mrs. Niki Sinha, the learned counsel appearing on behalf of the State.

2. This petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. The learned counsel for the petitioner submits that Vakalatnama in view of the protocol has been supplied by the Seraikella Jail online and after filling it up the Vakalatnama has been filed. He further submits that the petitioner has been released by the High Court and he is on bail.

4. In view of his submission, the defect as pointed by the office is ignored.

5. The petitioner has filed this petition for quashing the order taking cognizance dated 01.10.2020 including the entire criminal proceeding arising out of F.I.R being Adityapur P.S.Case No.90/2020,

pending in the court of learned Chief Judicial Magistrate, Seraikella. The prosecution was launched on the written report of this petitioner who is the informant in Adityapur P.S. Case No.90/2020 on the following premise:

*“That the prosecution case has been initiated on the basis of written report of the informant namely Sanjay Kumar Mohanty (petitioner herein), the F.I.R has been registered by the Officer-in-Charge, Adityapur P.S., wherein he has stated that on 18.07.2020 at about 7:30 P.M., the informant Sanjay Kumar Mohanty, was returning back towards his house from Saini Medical, Adityapur by his vehicle bearing Registration No.WB-20-AC-8325, when he reached near Mangalam City before 20 Metres at Service Road, two persons with covered face fired over the vehicle, but anyhow the informant escaped and no injury was received by any person. Previously Sanjay Pradhan and Ashok Pradhan, resident of Ashangi, had threatened to kill him. Hence, he expressed full doubt against them for the alleged firing. Hence, this case.”*

6. The said F.I.R was lodged by the petitioner by making allegation for the offence 307/34 of the I.P.C and sections 25(1-b)a/26/35/27 of the Arms Act. The police investigated the case and after few days the Investigating Officer found that the F.I.R lodged by the petitioner is false and rather than submitting Final Form in the said F.I.R., the police has arrested the petitioner on 27.07.2020 on the same F.I.R on the ground of lodging false F.I.R.

7. According to the petitioner, the trial court has taken cognizance under sections 182, 211, 120(B), 114, 109, 201, 307/34 IPC and under sections 25(1-b)a/26/27/35 of the Arms Act which is not in accordance with and in consonance of section 195 Cr.P.C read with section 468 Cr.P.C.

8. The learned counsel for the petitioner submits that so far as section 182 and 211 IPC are concerned that is the procedure prescribed under section 195 Cr.P.C is required to be followed which has not been taken into consideration by the trial court. To buttress his argument, he relied in the case of *“Saloni Arora v. State (NCT of Delhi)”*, reported in (2017) 3 SCC 286. Paragraph nos. 9 to 14 of the said judgment are quoted hereinbelow:

*“9. As rightly pointed out by the learned counsel for the parties on the strength of law laid down by this Court in Daulat Ram v. State of Punjab that in order to prosecute an accused for an offence punishable under Section 182 IPC, it is mandatory to follow the procedure prescribed under Section 195 of the Code else such action is rendered void ab initio.*

*10. It is apposite to reproduce the law laid down by this*

*Court in Daulat Ram which reads as under: (AIR p. 1206)*

*“There is an absolute bar against the court taking seisin of the case under Section 182 IPC except in the manner provided by Section 195 CrPC.*

*Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. The offence under Section 182 is complete when a person moves the public servant for action. Where a person reports to a Tahsildar to take action on averment of certain facts, believing that the Tahsildar would take some action upon it, and the facts alleged in the report are found to be false, it is incumbent, if the prosecution is to be launched, that the complaint in writing should be made by the Tahsildar, as the public servant concerned under Section 182, and not leave it to the police to put a charge-sheet. The complaint must be in writing by the public servant concerned. The trial under Section 182 without the Tahsildar’s complaint in writing is, therefore, without jurisdiction ab initio.”*

*(emphasis supplied)*

**11.** *It is not in dispute that in this case, the prosecution while initiating the action against the appellant did not take recourse to the procedure prescribed under Section 195 of the Code. It is for this reason, in our considered opinion, the action taken by the prosecution against the appellant insofar as it relates to the offence under Section 182 IPC is concerned, is rendered void ab initio being against the law laid down in Daulat Ram—quoted above.*

**12.** *The learned counsel for the respondent (NCT, Delhi), however, submitted that the State has, therefore, made a fresh application in this behalf before the trial court which, according to him, is still pending consideration. Be that as it may.*

**13.** *We express no opinion on such application, if it is filed by the State as, in our view, it has to be dealt with on its own merits in accordance with law by the court concerned.*

**14.** *In the light of foregoing discussion, the appeals succeed and are allowed. The impugned orders, stand set aside.”*

9. Mrs. Niki Sinha, the learned counsel appearing on behalf of the respondent-State submits that there is very serious allegation against the petitioner and the petitioner cannot be allowed to be got free and the trial court has rightly taken cognizance.

10. The offence under section 182 IPC is complete when the complaint is found to be false therefore, it is the date for starting limitation when the investigation concludes and found the averments in the complaint are false. Section 195 has been enacted mainly to regulate and control prosecutions in respect of offences against administration of justice and contempt of lawful authority. Necessarily therefore when a matter is being judicially investigated or considered by a court or after it has been so investigated or considered, it will be an evasion of the provisions, of Section 195, Cr.P.C if a prosecution for offences against

administration of justice or even contempt of lawful authority arising out of or connected with such matter can be permitted except on the complaint of the court. In view of section 195, a well settled provision of law so far as offence under section 182 and 211 Cr.P.C is concerned, section 195 is required to be followed.

11. In view of the above facts and considering that the entire exercise is rendered void *ab initio* which has been earlier once considered by the Hon'ble Supreme Court in the case of "*Daulat Ram v. State of Punjab*"; AIR 1962 SC 1206, order taking cognizance dated 01.10.2020 including the entire criminal proceeding arising out of Adityapur P.S. Case No.90/2020, pending in the court of learned Chief Judicial Magistrate, Seraikella is quashed.

12. Seeing the nature of allegation against the petitioner, the State shall take further steps in accordance with law against the petitioner.

13. The instant petition [W.P.(Cr.)No.52 of 2021] stands disposed of.

14. I.A. if any stands disposed of.

**( Sanjay Kumar Dwivedi, J)**

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