

IN THE HIGH COURT OF JHARKHAND AT RANCHI**W.P.(Cr.) No. 448 of 2022**

1. Dr. Nishkant Dubey, aged about 51 years, son of Shri Radhey Shyam Dubey, resident of 18, G.R.G. Road, P.O. and P.S. GRG Road, New Delhi-110001
2. Mr. Kanishk Kant Dubey, aged about 21 years, son of Shri Nishikant Dubey, resident of 18, G.R.G. Road, P.O. and P.S. GRG Road, New Delhi-110001
3. Mr. Mahikant Kant Dubey, aged about 19 years, son of Shri Nishikant Dubey, resident of 18, G.R.G. Road, P.O. and P.S. GRG Road, New Delhi-110001
4. Mr. Manoj Tiwari, aged about 51 years, son of Chandradeo Tiwari, resident of MP Residence-24, Mother Teressa Crescent, Sadar patel Marg, P.O. and P.S. Parliament Street, District-New Delhi, 110021

..... Petitioners

Versus

1. The State of Jharkhand through the Director General of Police, Jharkhand, Ranchi
2. Manjunath Bhajantari, currently discharging his duties as the Deputy Commissioner, Deoghar
3. Suman Aman, currently discharging his duties as the Deputy Superintendent of Police and Incharge of Security of Deoghar Airport.
4. Praveen Kumar, currently discharging his duties as the Sub-Inspector of Kunda Police Station, Kunda, Deoghar.

..... Respondents

With

W.P.(Cr.) No. 452 of 2022

Sandeep Kumar Dhingra, son of P.R. Dingra, aged about 59 years, resident of Flat 21, Deevpreet Vikramshilla Enclave, Bolesi Town, P.O. and P.S. Deoghar, District Deoghar currently discharging his duties as the Director, Deoghar Airport, P.O. and P.S. Deoghar, District-Deoghar

..... Petitioner

Versus

1. The State of Jharkhand through the Director General of Police, Jharkhand, Ranchi
2. Suman Aman, currently discharging his duties as the Deputy Superintendent of Police and Incharge of Security of Deoghar Airport.
3. Praveen Kumar, currently discharging his duties as the Sub-Inspector of Kunda Police Station, Kunda, Deoghar.

With

W.P.(Cr.) No. 463 of 2022

1. Mr. Mukesh Pathak, aged about 55 years, son of Upendra Prasad Pathak, resident of House No. 45, Ward No. 8, Near Arorgya Bhawan, Janardan Colony, Jasidih, P.O. and P.S. Jasidih, District Deoghar 814142.
2. Mr. Deota Pandey @ Devta Kumar Pandey, aged about 32 years, son of Binod Kumar Pandey, resident of Beside SKP Vidya Vihar School, Near Jublee Ground, Bumpas Town, P.O. and P.S. Deosang, District Deoghar 814114.
3. Shri Pintu Tiwari @ Praveen Kumar Malviya aged about 45 years, son of Umakant Tiwari, resident of House No. 114, Ward No. 17, Thari Dulampur, P.O. and P.S. Deosang, District Deoghar-814114.

..... Petitioners

Versus

1. The State of Jharkhand through the Director General of Police, Jharkhand, Ranchi
2. Manjunath Bhajantari, currently discharging his duties as the Deputy Commissioner, Deoghar
3. Suman Aman, currently discharging his duties as the Deputy Superintendent of Police and Incharge of Security of Deoghar Airport.
4. Praveen Kumar, currently discharging his duties as the Sub-Inspector of Kunda

Police Station, Kunda, Deoghar.

..... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners : Mr. Prashant Pallav, Advocate
 For the Resp. No. 1 : Mr. Sachin Kumar, A.A.G-II
 For the Respondent Nos. : 2 to 4: Ms. Priti Priyamda, Advocate

4/Dated: 13/03/2023

In all these three writ petitions common question of law and facts and F.I.R. are under challenge that is why all these writ petitions have been heard together with the consent of the parties.

2. Heard Mr. Prashant Pallav, learned counsel for the petitioners, Mr. Sachin Kumar, learned counsel for the respondent no. 2 and Ms. Priti Priyamda, learned counsel for the respondent nos. 2 to 4.

3. All these petitions have been filed for quashing of the F.I.R. bearing Deoghar Kunda P.S. Case No. 169 of 2022 including the entire criminal proceeding registered under sections 336, 447 and 448 of the Indian Penal Code and section 10 and 11A of the Aircraft Act, 1934, pending in the Court of learned Sub Divisional Magistrate, Dumka.

4. F.I.R. was registered on 02.09.2022 alleging therein that the petitioners forcibly entered the AIR Traffic Control (hereinafter referred to As ATC) and pressurized the personnel to grant him permission to take off. It has been further alleged that the Deoghar Airport is not equipped for night take-offs. The sunset on the 31st August, 2022 occurred at 6.03 P.M. In light of the aforesaid understanding, the informant has lodged the F.I.R. against the petitioners in the capacity of being the In-charge of Security of Deoghar Airport.

5. Mr. Prashant Pallav, the learned counsel for the petitioners submits that in W.P.(Cr) No. 448 of 2022 the petitioner no.1 is Chairman of the Airport

Advisory Committee of Deoghar Airport and reviews the functioning of the newly inaugurated airport. He submits that petitioner nos.2 and 3 are the sons of petitioner no.1 and petitioner no.4 is also a member of the Standing Committee, Civil Aviation. The petitioner nos.1 and 4 are the Member of Parliament from their respective constituency. He further submits that it has been alleged that the petitioners have pressurized the personnel to grant him permission to take-off flight as they have landed with a chartered flight to visit to a victim's family in the district of Dumka. He further submits that Aircraft Rules 1937 defines flight by night and Rule 4 of Schedule II there speaks that flight by night for the purpose of this schedule, except where otherwise stated, means a flight performed between the period of half an hour after sunset and half an hour before sunrise and it has been disclosed that the flight took off at 6.17 p.m. He further submits that F.I.R. was lodged by Suman Aman, Deputy Superintendent of Police and Incharge of Security of Deoghar Airport. He submits that the petitioner in W.P.(Cr.) No. 452 of 2022 is Director, Deoghar Airport and in W.P.(Cr.) No. 463 of 2022 the petitioner no.1 is a practicing advocate and petitioner nos. 2 and 3 are the '*karyakartas*' (workers) for the Bhartiya Janta Party. He further submits that FIR can not be lodged under the Aircraft Act and cognizance shall be taken under section 12-B by the previous sanction of the Director General of Civil Aviation or Director General of Bureau of Civil Aviation Security or Director General of Aircraft Accidents Investigation Bureau. He further submits that in view of that section only complaint can be maintained. He refers to the definition of "complaint" under section 2(d) of the Cr.P.C. He further submits that since "complaint" only is maintainable the F.I.R. itself was abuse of process of law. He further submits that several other sections of the Act are there and Rule 45 and 46 of the Aircraft (Security) Rules, 2011 is there. He further refers to Rule 45 and 46 of the Aircraft (Security) Rules, 2011. He also refers Aircraft Rules, 1937

particularly Schedule II of Rule 4. He submits that in view of Rule 45 and 46 of the Aircraft (Security) Rules, the manner prescribed therein how incident is required to be reported due to lapse for the security reasons. He further submits that Chartered Aircraft took off at 18.17 hours and in view of Rule 4 the outer time limit was 18.33 hours. He further submits that F.I.R. has also been registered under sections 336, 447 and 448 of the Indian Penal Code whereas punishment is already prescribed therein the Aircraft Act, 1934 and in view of the well settled provision of law if the Special Act is there Sections of Penal Code are not attracted. To buttress his argument, he relied in the case of **"Hare Kant Jha V. The State of Jharkhand and Another", 2014 SCC**

Online Jhar 1560 wherein para 8 it has been held as under:--

"8. Having heard counsels for both the sides and upon going through the FIR, I find that there is allegation in the FIR that the accident had taken place in the mines as unauthorized persons were committing theft of coal in the mines. Accordingly even if allegations in the FIR are accepted in entirety, the offence, if any, made out against the petitioner relates to contravention of the provisions of the Mines Act, specially Sections 23, 70, 72, 72-C of the Mines Act, which relate to the accident in the mines, causing loss of life. Section 79 of the Mines Act clearly lays down that no Court shall take cognizance of any offence under this Act, unless complaint thereof is made by the competent authority within the prescribed period. Section 75 of the Act clearly lays down the persons, who are authorized to make the complaint for the offence under the Act."

6. He further submits that it is an admitted fact that untoward incident has taken place in the district of Dumka and to hand over a cheque of Rs. 28 lakhs to the family of the victim the petitioners have come from Delhi through Chartered plane to visit the family of the victim and handed over a cheque of Rs. 28 lakhs and thereafter they returned from Deoghar to Delhi by Chartered plane. He submits that the action is malafide against the petitioners. He submits that in (W.P.(Cr.) No. 448/2022) petitioner no.1 is Chairman of the Airport Advisory Committee of Deoghar Airport and petitioner nos.2 and 3 are the sons of petitioner no.1 and petitioner no.4 is also a member of the Standing Committee, Civil Aviation. He submits that the petitioner nos.1 and 4 are the Member of Parliament from their respective constituency. He further submits that it is absurd to think that the persons who are in such capacity will violate

the law. He further submits that the case of the petitioners is fully covered in the light of parameters as held by the Hon'ble Supreme Court in the case of **"State of Haryana and others V. Bhajan Lal and others" 1992 Supp. (1) SCC 335** particularly condition Nos. 5, 6 and 7 as disclosed in para 102 of the judgment.

7. He submits that the F.I.R. is itself the abuse of process of law and this Court is competent to quash the F.I.R. He submits that the F.I.R. is fit to be quashed if it is coming within the premises to entertain proceeding under Article 226 of the Constitution of India and under section 482 of the Cr.P.C. He further submits that the F.I.R. was registered under sections 10 and 11A of the Aircraft Act, 1934 which speaks the violation of different provision of Act but there is no allegation in the F.I.R. that which provision of Act has been violated. He submits that the entire criminal proceeding may kindly be quashed.

8. On the other hand, Mr. Sachin Kumar, learned counsel for the respondent no. 1 submits that it is an admitted fact that on 31.08.2022 the petitioners landed at Deoghar Airport from Delhi Airport by Chartered flight. He submits that it has been alleged in the F.I.R. that at 17.25 hours the door of the plane was closed and thereafter sometime pilot came out from the Aircraft and went to the office of the AIR Traffic Control (ATC). He further submits that thereafter the petitioners have come out from the Aircraft and they entered into the ATC without any authority and in that view of the matter finding security lapses, incharge of the Airport Security lodged the present F.I.R. He further draws the attention of the averments made in the counter-affidavit wherein it has been stated that witnesses have informed the Investigating Officer that the visibility 3500 mts was there whereas it was required 5000 mtr and considering this aspect of the matter ATC clearance has not been provided and later on ATC clearance was provided and the Aircraft took off. He submits that there are sufficient materials on record to suggests that petitioners have

violated the laws. He further submits that if the Sections of Indian Penal Code are there the Court is not required to quash the entire criminal proceeding at this stage and the same can be looked into at the time of cognizance by the learned court. To buttress his argument, he relied on judgment in the case of "***Institute of Chartered Accountants of India V. Vimal Kumar Surana and Another***" reported in ***(2011) 1 SCC 534***. On the same line, he further relied in the case of "***Jayant and others V. State of Madhya Pradesh***" reported in ***(2021) 2 SCC 670*** and submits that at this stage F.I.R. is not required to be quashed which can be looked into at the time of cognizance. Relying on these two judgments, he submits that there is no merit in the writ petitions and the same are required to be dismissed.

9. Ms. Priti Priyamda, learned counsel for the respondent nos. 2 to 4 adopted the argument of Mr. Sachin Kumar, learned counsel for the respondent no.1.

10. The Court has gone through the counter affidavit of the all the respondents and finds that almost the grounds taken in the counter affidavits are same as has been taken by respondent no. 1 in the counter-affidavit.

11. In view of above submission of the learned counsel for the parties the Court has gone through the materials on record including the F.I.R. and finds that admittedly the F.I.R. was registered against the petitioners alleging therein that they have entered into the ATC area and they have forced to provide permission for taking off the flight. It is also an admitted fact that untoward incident has taken place in the district of Dumka and the petitioners have visited the place of victim and handed over a cheque of Rs. 28 lakhs to the family of the victim which has not been denied in the counter-affidavit filed by either of the respondents. It is alleged that flight took off inspite of insufficient visibility which is beyond the time. While looking into the Schedule II Rule 4 of The Aircraft Rules, 1937, it appears that flight by night means a

flight performed between the period of half an hour after sunset and half an hour before sunrise. For ready reference of the said Rule is quote herein-below:-

"4. Flight by Night-Flight by night for the purpose of this Schedule, except where otherwise stated, means, a flight performed between the period of half an hour after sunset and half an hour before sunrise."

12. Looking into the said Rule it is crystal clear that before half an hour of sunrise and half an hour after sunset flight can take off. It is not the case that flight has taken off in absence of any clearance from the ATC. Had it been the case that in absence of any ATC clearance flight has taken off however matter would have otherwise. However, it is admitted in the counter-affidavit of the respondent no.1 particularly para no. 6 of the counter affidavit wherein it has been admitted that all the witnesses have stated that ATC clearance was provided and the flight took off on 18.17 hours. The question remains when the ATC clearance is there whether the petitioner nos. 1 and 4 who are heading the advisory committee are liable to face prosecution or not. The answer is clearly no, considering that it is responsibility of the Airport Authority to take the safety of the Aircraft as well as of the passenger. In the F.I.R. Deputy Superintendent of Police has alleged that pilot has come out from Aircraft and he was proceeding towards ATC on the other hand in the F.I.R. he further stated that when he reached to ATC office he found that pilot was already present there which is contradictory statement. Further it is well known that once the pilot takes command of the aircraft thereafter only the passengers are allowed to enter into Aircraft. So prima facie no case of violation is made out against the petitioners. Moreover the petitioner nos. 2 and 3 who are sons of petitioner no. 1 in WP.(Cr.) No. 448 of 2022, have unnecessarily been made accused in the case in hand even Airport Director has not been spared and has been made accused in the F.I.R.

13. The Aircraft (Amendment) Act, 2020 was published in the Gazette

on 19th September, 2020 wherein Section 12B has been inserted which provides how cognizance of the offence is required to be taken in violation of Aircraft Act. The said section is quoted herein-below:-

*" 12B(1) No court shall take cognizance of any offence punishable under this Act, save on a complaint made by or with the previous sanction in writing by the Director General of Civil Aviation or Director General of Bureau of Civil Aviation Security or Director General of Aircraft Accidents Investigation Bureau, as the case may be.
2.....
3....."*

14. Looking into Section 12B it is crystal clear that no Court is allowed to take cognizance under the said Act save on a complaint made by or with the previous sanction in writing by the Director General of Civil Aviation or Director General of Bureau of Civil Aviation Security or Director General of Aircraft Accidents Investigation Bureau, as the case may be. Thus F.I.R. itself is not maintainable when the complaint is required to be filed pursuant to sanction as disclosed in that Act. Reference may be made to the case of **"C. Muniappan & Others. V. State of Tamil Nadu"** reported in (2010) 9 SCC 567 wherein para 33, 34 and 35 the Hon'ble Supreme Court has held as under:-

"33. Thus, in view of the above, the law can be summarised to the effect that there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195 CrPC are mandatory. Non-compliance with it would vitiate the prosecution and all other consequential orders. The court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction.

34. The learned counsel for the appellants have submitted that as no charge could have been framed under Section 188 IPC in the absence of a written complaint by the officer authorised for that purpose, the conviction under Section 188 IPC is not sustainable. More so, it falsifies the very genesis of the case of the prosecution as the prohibitory orders had not been violated, no subsequent incident could occur. Thus, the entire prosecution case falls.

35. Undoubtedly, the law does not permit taking cognizance of any offence under section 188 I.P.C. unless there is a complaint in writing by the competent public servant. In the instant case, no such complaint had ever been filed. In such an eventuality and taking into account the settled legal principles in this regard, we are of the view that it was not permissible for the trial court to frame a charge under Section 188 I.P.C. However, we do not agree with the further submission that absence of a complainant under Section 195 Cr.P.C. falsifies the genesis of the prosecution case and is fatal to the entire prosecution case"

15. In view of the matter the F.I.R. is not maintainable as has been held by the Hon'ble Supreme Court in the case of **C. Muniappan (supra)**.

16. Further Aircraft (Security) Rules, 2011 are relevant to consider and Rule 45 of Aircraft (Security) Rules, 2011 speaks of reporting of security

accident or incident and Rule 46 of Aircraft (Security) Rules, 2011 speaks of investigation of security accident or incident. The said rules are quoted herein-below:-

"45. Reporting of Security accident or incident.- Every aircraft operator aviation security group, aerodrome operator, regulated agent and owner or operator of catering establishment shall report the security accident or security incident to the (Director General) immediately on the occurrence of the security accident or security incident.

46. Investigation of security accident or incident. (1) The (Director General) may order investigation of any security accident or security incident and appoint an officer not below the rank of Assistant (Director General) of Security as Inquiry Officer.

(2) The Inquiry Officer shall, after affording an opportunity of being heard to the defaulting person, make a report to the [Director General] who should forward the same to the Central Government"

17. In view of Rule 45 and 46 of the Aircraft (Security) Rules, 2011, security of the Aircraft Rules are required to be conducted in view of these two rules which is lacking in the case in hand.

18. Section 10(2) of the Aircraft Act, 1934 speaks as under:-

"(2). In making any other rule under section 5 or in making any rule under [Section 4, Section 7], section 8, section 8-A or section 8-B, the Central Government may direct that a breach of it shall be punishable with imprisonment for a period which may extend to three months, or with fine which may extend to one thousand rupees, or with both]."

19. Section 11-A of the Aircraft Act, 1934 speaks as under:-

11-A. Penalty for failure to comply with directions issued under Section 5-A-If any person wilfully fails to comply with any direction issued under Section 5-A, he shall be punishable with imprisonment for a term which may extend to (two years) or [with fine which may extend to [one crore rupees], or with both."

20. Looking into Section 10(2) and 11A of the Aircraft Act, 1934 it is not disclosed which directions of the Central Government have been breached.

21. In view of above facts, as the F.I.R was also registered under section 10 and 11A of the Aircraft Act, 1934 and in view of subsection 2 of Section 10 what provisions and Central Government direction have been violated, is not disclosed and that view of the matter these sections are not attracted.

22. Further when the Special Act is there and provision of punishment is there it is well settled law that I.P.C. Sections are not attracted as has been held by the Hon'ble Supreme Court in the case of **Hare Kant Jha (supra)**. Further in the case of **Bhajanlal (supra)** in para 102 following criteria were

held for quashing the F.I.R.:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

23. In view of above facts, the case of the petitioners is coming under the criteria of 5, 6 and 7 of para 102 of the judgment in the case of ***Bhajanlal (supra)***.

24. The judgment relied by Mr. Sachin Kumar, learned counsel for the respondent no.1 in the case of ***Institute of Chartered Accountants of India (supra)*** is not in dispute. Considering the ingredients of Chartered Accountants Act consideration was there in the Chartered Accountant Act and where the Chartered Accountant impersonated in public and he has functioned like that and considering that aspect of the matter, the Hon'ble Supreme Court has come to the conclusion that Indian Penal Code are also attracted that is why the F.I.R. can be maintainable. The facts of the present case is entirely otherwise. In view of the fact this judgment is not helping the respondents.

25. The judgment relied by Mr. Sachin Kumar in the case of

Jayant(supra), the fact of the case is otherwise in view of the fact that the learned Magistrate has passed direction to investigate the case under section 156(3) Cr.P.C. which was investigated. The Hon'ble Supreme Court has held that proceeding in respect of MMDR Rules offence is not coming however held that proceeding under the I.P.C. will proceed in accordance with law and the facts of the present case are otherwise and thus this judgment is also not helping the respondents.

26. In view of the above facts, reasons and analysis and considering that Aircraft took off after permission of the ATC, Aircraft Act, 1934 is itself complete code and there are procedure prescribed therein to lodge the complaint and of the enquiry, in view of the Act, the competent authority has not complained anything, even Airport Director has been made accused and even the two sons of the petitioner no. 1 has not been spared and considering that when the Special Act is there, Sections of Indian Penal Code are not attracted, petitioner no.1 and 4 in W.P.(Cr.) No. 448 of 2022 are Member of Parliament and petitioner no.1 is Chairman of the Airport Advisory Committee of Deoghar Airport and petitioner no.4 is also a member of the Standing Committee, Civil Aviation, further considering the materials on record which suggests that several cases have been lodged against the petitioner no.1 in W.P.(Cr.) No. 448 of 2022 which have been quashed by this Court and some judgments are affirmed by the Hon'ble Supreme Court, it transpires that F.I.R. has been lodged malafidely and allowing to continue the proceeding will amount the abuse of process of law, accordingly, the F.I.R. bearing Deoghar Kunda P.S. Case No. 169 of 2022 including the entire criminal proceeding registered under sections 336, 447 and 448 of the Indian Penal Code and section 10 and 11A of the Airport Act, 1934, pending in the Court of learned Sub Divisional Magistrate, Dumka, is hereby quashed.

27. All these writ petitions are allowed and disposed of. Pending I.A., if

any, stands disposed of. Interim orders are vacated.

(Sanjay Kumar Dwivedi, J.)

Satyarthi/