

SUPREME COURT OF INDIA**Bench: Justice Abhay S. Oka and Justice Pankaj Mithal****Date of Decision: 07 November 2023**

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 3484 OF 2023
(ARISING OUT OF S.L.P. (CRIMINAL) NO(S).9228/2023)**RAMAKANT SINGH & ORS.****APPELLANT(S)****VERSUS****THE STATE OF JHARKHAND & ANR.****RESPONDENT(S)****Legislation:**Section 190, 200, 202, 482 of the Code of Criminal Procedure, 1973
(CrPC)

Sections 326, 307, 34, and 302 of the Indian Penal Code, 1860 (IPC)

Section 27 of the Arms Act, 1959

Subject: The appropriateness of a protest petition against an order of taking cognizance, and the limitation of a magistrate's power to modify a previous order of cognizance.**Headnotes:**

Criminal Procedure – Protest Petition Against Order Taking Cognizance – Inappropriateness of High Court's Reference to Nupur Talwar Case – High Court erred in applying the principle of the Nupur Talwar case to the present matter, where the protest petition was against an order taking cognizance. The appellants successfully challenged the High Court's judgment that incorrectly applied this principle. [Para 7-9]

Judicial Procedure – Cognizance of Offence – Limitation of Magistrate’s Power to Modify Previous Order – Learned Chief Judicial Magistrate exceeded his authority by entertaining a protest petition against his earlier order of taking cognizance, leading to an impermissible modification of that order. This oversight in legal understanding was not recognized by the High Court. [Para 10]

Decision – Setting Aside High Court and Chief Judicial Magistrate’s Orders – The Supreme Court set aside the High Court’s order dated 20th March, 2023, and the Chief Judicial Magistrate’s order dated 3rd November, 2009. The Supreme Court maintained the Chief Judicial Magistrate’s order dated 9th April, 2009, taking cognizance against Gupteshwar Singh. The judgment clarifies that no adjudication was made on the appellants’ involvement in the crime and does not prevent future legal proceedings in accordance with law. [Para 11]

Referred Cases:

- **Nupur Talwar vs. CBI and Anr., (2012) 2 SCC 188**

J U D G M E N T

ABHAY S. OKA, J.

Notice has been served to the respondent no.2 as recorded in the Office Report dated 25th September, 2023. Leave granted.

The appellant has impugned the judgment dated 20th March, 2023 passed by the learned Single Judge of the High Court on a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, “CrPC”).

Few facts are required to be set out for the purposes of understanding the controversy. A First Information Report (for short, “FIR”) was registered on 11th November, 2003, at the instance of one Dhananjay Singh (since

deceased) for the offences punishable under Sections 326, 307 read with Sections 34 and 302 of the Indian Penal Code, 1860 (for short, “IPC”) and Section 27 of the Arms Act, 1959. The allegation in the FIR was mainly directed against one Gupteshwar Singh and the allegation against the appellants was that they were present at the scene of crime.

On 3rd January, 2005, a charge-sheet was filed against all four accused persons. On the basis of the order dated 29th November, 2006 passed by the learned Chief Judicial Magistrate, the Crime Investigation Department (for short, “CID”) made reinvestigation and submitted a charge-sheet dated 31st March, 2009. In the final report submitted by the CID, it was recorded that no material was found against the appellants.

On 9th April, 2009, the learned Chief Judicial Magistrate took cognizance on the basis of the charge-sheet filed by the CID on 31st March, 2009 against accused-Gupteshwar Singh for the offences punishable under Section 302 read with Section 34 of the IPC and Section 27 of the Arms Act.

The second respondent’s father purported to file a protest petition by making an allegation that the CID acted in collusion with the present appellants. The protest petition was for raising an objection to the order dated 3rd November, 2009, taking cognizance only against one accused—Gupteshwar Singh. Thereafter, a further order was passed by the learned Chief Judicial Magistrate on 3rd November, 2009 taking cognizance against the present appellants. This is the order which was subjected to a challenge before the High Court.

The High Court relied upon a decision of this Court in the case of *Nupur Talwar vs. CBI and Anr.*¹ and rejected the petition for quashing filed by the appellant.

The learned counsel appearing for the appellants submitted that the issue which arose in the case of *Nupur Talwar* (supra) was

1 (2012) 2 SCC 188

completely different. The issue was whether after receiving a final charge-sheet recording that no case was made out of commission of offence against the accused, the learned Judicial Magistrate can take cognizance of the offence under clause (b) of sub-Section (1) of the Section 190 of the CrPC. She submitted that a protest petition can be entertained complaining about the report filed by the Investigating Agency. But there is no question of entertaining a protest petition against the order passed by the learned Chief Judicial Magistrate on 9th April, 2009 of taking cognizance.

We have also heard the learned counsel appearing for the State.

We have perused the order dated 9th April, 2009. The order was passed on the charge-sheet dated 31st March, 2009 filed by the CID. The order takes cognizance only as against Gupteshwar Singh. Surprisingly, a protest petition against the said order was entertained by the learned Chief Judicial Magistrate and he proceeded to pass the impugned order on 3rd November, 2009 taking cognizance against the present appellants. Such a course was not permissible as it was not open for the learned Chief Judicial Magistrate to entertain a protest petition against his earlier order of taking cognizance. The order dated 3rd November, 2009, amounts to modification of the earlier order dated 9th April, 2009, which was not permissible as there is no power conferred on the learned Judicial Magistrate to modify earlier order of taking cognizance.

These legal aspects have been clearly overlooked by the High Court. By referring to the decision of this Court in the case of *Nupur Talwar* (supra), the High Court observed that it is wellsettled that once protest petition is filed, depending upon the facts of the case, the Court can proceed on the basis of that protest petition and follow the procedure prescribed under Sections 200 and 202 of the CrPC. In this case, the Court was dealing with a completely

different case where protest petition was filed against an order taking cognizance.

Therefore, the Appeal succeeds. The impugned order dated 20th March, 2023 of the High Court is set aside and the impugned order dated 3rd November, 2009 passed by the learned Chief Judicial Magistrate is hereby quashed and set aside.

We clarify that the order dated 9th April, 2009 of the learned Chief Judicial Magistrate taking cognizance against Gupteshwar Singh is maintained. We also make it clear that we have made no adjudication on the question of involvement of the present appellants in the crime in question. This judgment will not prevent the Court from proceeding in accordance with law at a later stage.

Subject to what is observed above, the Appeal is allowed.

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