

**Shri Devdas Barua Vs. The State of Jharkhand**

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**SooperKanoon Citation :** [sooperkanoon.com/77641](http://sooperkanoon.com/77641)

**Court :** Jharkhand

**Decided On :** Nov-24-2016

**Appellant :** Shri Devdas Barua

**Respondent :** The State of Jharkhand

**Judgement :**

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr.M.P. No. 578 of 2016  
Shri Devdas Barua, S/o Late B.B. Barua, Resident of Qtr. No. KF1, G.P. Slope,  
P.O.Kadma, P.S. Kadma, TownJamshedpur, District East Singhbhum .... .  
Petitioner Versus The State of Jharkhand .... . Opp. Party CORAM :  
HON'BLE MR. JUSTICE DR. S.N. PATHAK For the Petitioner : Mr. Chandra S.  
Singh, Advocate For the State : A.P.P. 04/24.11.2016 The petitioner has come out  
with a prayer for quashing of entire criminal proceeding against the petitioner in  
relation to Kadma P.S. Case No. 205 of 2014 dated 07.10.2014 including the order  
dated 11.01.2016 wherein learned Judicial Magistrate, 1 st Class, Jamshedpur  
failed to consider the fact the petitioner was not at all driving the vehicle in  
question during the time of accident. The facts, which are relevant in this case, in  
short, is that an F.I.R. was lodged on 07.10.2014 under Sections 279, 337, 338 at  
Kadma Police Station against one Devdas Barua, S/o late B.B. Barua, resident of  
Qtr. No. KF1, G.P. Slope, P.O.Kadma, P.S. Kadma, TownJamshedpur wherein it  
was stated that on 06.10.2014 at about 10.30 p.m. the informant Wasuddin Khan  
alongwith his brotherinlaw namely Mohd. Ashraf Khan were standing in the  
Ganesh Puja Ground and at that very point of time one Devdas Barua rashly and

negligently dashed Mohd. Ashraf Khan and he was seriously injured and thereafter with the help of local people was transferred to TMH Hospital and thereafter the F.I.R. was lodged at 6.00 p.m. The injured Mohd. Ashraf Khan succumbed to his injury and the police submitted final form on 25.01.2015 adding Section 304A of the Indian Penal Code. It would be proper to mention here that the learned Judicial Magistrate, 1 st Class vide order dated 16.04.2015 held that prima facie case for offences under Sections 279, 337, 338, 304(A) of the Indian Penal Code is made out against the accused persons and accordingly cognizance of the offence was taken against the accused Devdas Barua. Learned counsel appearing for the petitioner submitted that on the alleged date of occurrence the petitioner was not plying the 2 vehicle in question and it was being driven by one Abdul Hanif. Learned counsel further submitted that though the local police was apprised of the fact that the petitioner was not driving the vehicle but the police failed to to ascertain the fact. It is further submitted that a petition was filed impleading the driver Abdul Hanif as accused person for summoning him to appear before the court with regard to the matter for prosecution. It is further submitted that the F.I.R. is afterthought and most of the witnesses are hearsay and no T.I.P. had taken place for identifying the accused and the witnesses are not known the accused persons. The petitioner further stated that he was not present at he time of occurrence and he was not the person who was plying the vehicle. It is also submitted that it is a case of wrong identification and as such the order taking cognizance was bad in law. Learned counsel for the petitioner further submitted that he was never associated with the occurrence and the evidence in support of the case, clearly fails to prove the charge against the accused and continuance of such proceeding would seriously jeopardize and prejudice the interest of the accused. On the other hand, learned A.P.P. appearing for the State vehemently opposed the contention of the learned counsel for the petitioner and submitted that from the record it transpires that the accused Devdas Barua was driving the vehicle rashly and negligently and dashed the victim deceased Mohd. Ashraf Khan and during course of investigation several witnesses examined by the I.O. have specifically mentioned that Devdas Barua was driving the vehicle rashly and negligently which caused accident. Learned counsel appearing for the State further contended that after submission of chargesheet and considering the

material available on record, the learned court below has already taken cognizance of the offence against the accused Devdas Barua and there is nothing on record to show that someone else was driving the vehicle. Having gone through the rival contentions of the parties and findings of the court below, this Court is of the considered view that this is not proper stage of quashing the entire criminal proceeding initiated against the petitioner nor the order dated 11.01.2016 requires any 3 interference. The Hon'ble Apex Court in Amanullah v. State of Bihar; (2016) 6 SCC (Cri) 551 in Paragraph 25 held that: 25. A careful reading of the material placed on record reveals that the learned CJM took cognizance of the offences alleged against the accused persons after a perusal of the case diary, chargesheet and other material placed before the court. The cognizance was taken, as a prima facie case was made out against the accused persons. It is well settled that at the stage of taking cognizance, the court should not get into the merits of the case made out by the police, in the chargesheet filed by them, with a view to calculate the success rate of prosecution in that particular case. At this stage, the court's duty is limited to extent of finding out whether from the material placed before it, the offence alleged therein against the accused is made out or not with a view to proceed to further with the case. 26. The proposition of law relating to Section 482 Cr PC has been elaborately dealt with by this Court in Bhajan Lal case. The relevant paras 102 and 103 of which read thus:

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 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. 4 (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 Act concerned (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 Act concerned, 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. 103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of the rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. As accumulative effect of the aforesaid fact, proposition of law and judicial pronouncements, I am of the view that order dated 11.01.2016 does not warrant any interference and as such the prayer for quashing the entire criminal proceeding is, hereby, dismissed. (Dr. S. N. Pathak, J.) Anit