

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3252 of 2013

Minakshi Pattnaik *Petitioner*
versus-
State and another *Opposite Parties*

CORAM: JUSTICE S. PUJAHARI

ORDER
20.06.2022

Order
No.

05. 1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order of cognizance dated 5th July, 2013 passed by the learned J.M.F.C., Aska in G.R. Case No.18 of 2013 as well as the entire proceeding.
3. Heard the learned counsel for the Petitioner and the learned counsel for the State-Opposite Party No.1. No one appears for the Opposite Party No.2-Informant in spite of sufficiency of service of notice.
4. The Petitioner has sought for quashment of the order of cognizance as well as the entire proceeding on the ground that though the complainant had taken Rs.1,10,000/- and kept his Motorcycle as mortgage, but later on a false case has been initiated against her for committing theft of his Motorcycle.
5. Learned counsel appearing for the Petitioner submits that as the husband of the Petitioner is no way connected in any case, still he

was taken to custody by the police and assaulted, for that, a petition was filed by her before the Human Rights Commission, Bhubaneswar and the Human Rights Commission taking cognizance on the same, had directed to pay compensation to the husband of the Petitioner by the police officer. The police being vindictive for the same, initiated a false and frivolous case against the Petitioner and submitted charge sheet. Therefore, the Petitioner having not committed theft of Motorcycle taking away the same forcibly from the possession of the Informant party, the prosecution is liable to be quashed, notwithstanding recovery of the Motorcycle from the possession of the Petitioner. The prosecution allegation is also inherently improbable, as it is not possible on the part of the Petitioner to take away the motorcycle which locked herself.

6. Learned counsel for the State controverting the submission of the learned counsel for the Petitioner, submits that such contention is devoid of substance. According to him, materials are there that the Petitioner herself in a trolley auto lifted the Motorcycle and transported the same forcibly and kept the same with her. After report was lodged, the same is recovered from him. So prima facie material being there against the Petitioner and the Court looking into the same having proceeded against the Petitioner taking cognizance of the offence alleged, as prima facie ingredients of the offences alleged are made out, this Court should not quash the order of cognizance in exercise of power under Section 482 of Cr.P.C. appreciating the contention and the materials on record.

7. In the case of *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., reported in (2000) 3 SCC 269*, the Apex Court have held as follows:-

“Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgement of first information report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the court on a perusal of the complaint comes to a conclusion that the allegations leveled in the complaint or charge-sheet on the face of it do not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law. To exercise powers under Section 482 of the Code, the complaint in its entirety will have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear ex facie on the complaint. The truth or falsity of the allegations would not be gone into by the Court at this earliest stage. Whether or not the allegations in the complaint were true is to be decided on the basis of the evidence led at the trial.”

8. It is only in cases when the allegations in the complaint/charge sheet do not make out any case against the accused nor do they disclose the ingredients of an offence alleged against the accused or the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion that there is sufficient ground for proceeding against the accused, the power under Section 482 Cr.P.C. has to be exercised to quash the prosecution, is also the view in the case of *Medchl Chemicals & Pharma (P) Ltd.* (supra). Besides the same, if any statutory bar is there to proceed against the accused persons, the Court shall also not proceed against them.

9. Keeping in mind the aforesaid law laid down, when the case of the Petitioner in this case is addressed, it appears to this Court that prima facie the materials are there against the Petitioner indicating the offences to have been committed. No doubt, relating to the self-same occurrence, complaint was made regarding violation of the human rights with saddled with liability, but the F.I.R. having registered earlier to the same and investigated by the police and during the course of investigation of the same, even if there was alleged violation of human rights of any of the accused or other persons, but the same is no ground to quash the criminal prosecution against the present Petitioner inasmuch as the Court at this stage is required to have a look on the materials collected by the police or in the complaint discloses commission of any offence to take cognizance of the same and proceeded against the alleged perpetrator of the crime, but not to thresh out the same to examine its truthfulness of such allegation.

10. On consideration of the facts and submissions made as well as the law laid in the case of *Medchl Chemicals & Pharma (P) Ltd.* (supra), this Court, therefore, is of the view that the impugned order of cognizance and proceeding against the Petitioner, therefore, does not require any interference, as the case of the Petitioner is not covered by any of the circumstances as laid down in the case of *Medchl Chemicals & Pharma (P) Ltd.* (supra) for quashment of the prosecution.

11. Accordingly, the CRLMC stands dismissed.

12. However, at this stage, learned counsel for the Petitioner submits that Petitioner be given liberty to raise all contentions at the time of framing of charge.

13. Needless to say that if such contention is raised at the time of framing of charge, reluctance of this Court to interfere with the order of cognizance and the proceeding against the Petitioner at this stage shall have no reflection on the same, but the Court shall decide the same on its own merit.

(S. Pujahari)
Judge

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