

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.772 of 2014

Darapu Saradamma and others

Petitioners
....
Mr. P. K. Mishra, Advocate

-versus-

State of Odisha and another

Opposite Parties
...
Mr. Ishwar Mohanty, ASC

**CORAM:
THE CHIEF JUSTICE**

Order No.

**ORDER
09.09.2022**

- 06.
1. The present petition is by six Petitioners challenging the order dated 29th November, 2013 passed by the learned SDJM, Paralakhemundi in 1CC No.27 of 2011 taking cognizance of the offences under Sections 404/406 read with Section 34 IPC and issuing summons to the Petitioners to face trial for the said offences. The petition also challenges an order dated 10th September, 2013 passed by the Sessions Judge, Gajapati in Criminal Revision No.4 of 2012 wherein the order dated 16th December, 2011 passed by the SDJM was set aside and the Magistrate was directed to reconsider the complaint.
 2. The background facts are that Respondent No.2-Complainant preferred the aforementioned complaint i.e. 1CC No.27 of 2011 against the present Petitioners under Section 404/406/34 IPC. It may be mentioned here that the Petitioners herein and the

Complainant are descendants of one common ancestor having a share in the joint family property. The Complainant alleged that two of his other brothers took possession of the land and properties after the death of their father; that there is a civil suit pending between the parties; that the property was entrusted to his brothers who had misappropriated the same.

3. It is now stated that the civil suit was dismissed by a judgment and decree dated 31st July/16th August, 2001 on the ground that the suit properties already stand partitioned. It is stated that the Complainant preferred an appeal before this Court, which was registered as F.A. No.221 of 2001, which is pending final adjudication.

4. As far as the complaint itself was concerned, the SDJM by the order dated 16th December, 2011 dismissed it holding that there were no prima facie materials to take cognizance of the offences under the aforementioned Sections and the nature of allegations disclosed a civil dispute. Against the aforementioned order when the Complainant filed Criminal Revision No.4 of 2012, it was allowed by the first impugned order dated 10th September, 2013 of the learned Sessions Judge, Gajapati holding that the complaint should not be dismissed simply because the case is of a civil nature but it should be examined if the allegations contained therein disclose a criminal offence. Consequently, the impugned order dated 16th December, 2011 of the SDJM was set aside and the matter was remanded to the Magistrate for a fresh consideration.

5. By the second impugned order dated 29th November 2013, the SDJM has, in terms of the order passed in the Criminal Revision No.4 of 2012, taken cognizance of the aforementioned offences against the accused persons (Petitioners) under Sections 404/406/34 IPC.

6. The grievance of the present Petitioners is that on remand, the SDJM has mechanically taken cognizance of the offences vis-à-vis the present Petitioners and summoned them without actually considering the complaint afresh in light of the remand order passed by the learned Sessions Judge.

7. Having heard learned counsel for the Petitioners as well as learned Additional Government Advocate for the State, the Court is of the view that the pleas raised by the Petitioners questioning the order taking cognizance can well be urged by them at the appropriate stage before the learned SDJM and there is no need for the Court to interfere with the matter at this stage.

8. Accordingly, while declining to interfere at this stage, the petition is dismissed with the above observations. The Court clarifies that it has not expressed any view in the matter. The interim order passed earlier stands vacated. A copy of this order be communicated to the concerned trial court forthwith.

(Dr. S. Muralidhar)
Chief Justice