

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3678 of 2010

Sourav Kumar Biswal *Petitioner*
versus-
State of Orissa *Opposite Party*

CRLMC No.451 of 2011

Manoranjan @ Mansa Ranjan Das *Petitioner*
versus-
State of Orissa *Opposite Party*

CORAM: JUSTICE S. PUJAHARI

ORDER

07.03.2022

Order
No.

- 09.
1. Since both the cases have arisen out of the same order, both are heard together through hybrid mode and disposed of by this common order on consent of the parties.
 2. Heard the learned counsel for the parties.
 3. These applications under Section 482 of Cr.P.C. have been filed by the Petitioners with a prayer to quash the order dated 11th November, 2010 passed by the learned J.M.F.C., Basudevpur in G.R. Case No.203 of 2010, taking cognizance of the offences under Sections 407, 409 and 120(B) of the I.P.C.
 4. The prosecution allegation is that the rice was allotted to C.D.P.O. Basudevpur under the nutrition program vide the Office Letter No.1024 dated 21st June, 2010 of the District Social Welfare Officer, Bhadrak. Out of the same, 3500 bags of rice amounting to

1722.56 quintals were dispatched from the F.S.D. Ranital in 14 trucks of Maa Tarini Roadways, Sahadevkhunta, Balasore, who was the District Transporter for the year 2010-11. As the aforesaid, stock was meant for 3 months, the C.D.P.O. Basudevpur on 22nd June, 2010 was advised to keep the same in godowns locally arranged by her with her custody. But, on 23rd June, 2010, complaint was received that the same was kept and stored at Betada Godown taken on rent by the Petitioner in CRLMC No.3678 of 2010, Block Transporting Agent engaged for the year 2009-10. The way bill dispatched by the D.S.W. was received by the Petitioner in CRLMC No.451 of 2011, the Peon of the office along with the gate pass of the F.S.D. Ranital and on the instruction of the C.D.P.O., the rice was stated to have been delivered in the private godown of the Petitioner in CRLMC No.3678 of 2010, who was a Block Transporting Agent engaged for the year 2009-10. It came to light that the aforesaid was stored on the direction of the C.D.P.O. Since the C.D.P.O. did not act as per the advice of the D.S.W.O. and the rice was delivered in the godown of the Petitioner in CRLMC No.3678 of 2010 at Bhadrak, though it was required to be stored at Basudevpur. As such, F.I.R. was lodged pursuant to the same by the D.S.W.O. Investigation was conducted and charge sheet appears to have been filed.

5. The petitioners have come to this court seeking quashment of the proceeding on the ground that on the instruction of the C.D.P.O., the rice been delivered and kept in the godown of Petitioner in CRLMC No.3678 of 2010 by the Petitioner in CRLMC No.451 of 2011, Peon, they could not have been proceeded with inasmuch as they committed no criminality. The said act of them invites no criminality.

6. Learned counsel for the State, however, defended the order of the cognizance and the proceedings against Petitioners, as according to him, the materials on record would go to show that with the connivance with the C.D.P.O., the rice was delivered and kept at a point to which it was not meant for.

7. Needless to say that at the stage of cognizance, the inherent power of the court under section 482 of the Code of Criminal Procedure should be sparingly and cautiously exercised to quash a proceeding is the well settled position of law. It is only when the court comes to a conclusion that continuance of the proceeding would be manifest injustice or there would be abuse of the process of court, if such power is not exercise, then in such circumstances the court should exercise the power under section 482 to quash a proceeding. When the FIR of the complainant together with other materials collected during investigation taken at their face value don't constitute the offence alleged, such a power should be exercised. However at the stage, it is not open for the court either to sift the evidence or appreciate the evidence and come to the conclusion that no prima facie case made out to quash a prosecution.

8. Taking note of the aforesaid settled position of law, when the case of the petitioner is addressed it appears to this court that prima facie material is available against them in this case. Hence the cognizance and the proceeding against the Petitioners do not warrant any interference in exercise of power under Section 482 of Cr.P.C.

9. Accordingly, both the Criminal Misc. Cases are dismissed.

10. But liberty is given to the Petitioners to raise all their contentions at the time of framing of charge and in that event, the court

below shall decide the same in the manner known to law without being influenced by the reluctance of this court to quash the cognizance and the proceeding.

(S. Pujahari)
Judge

DA

