

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.858 of 2016

AFR

Trinath Jena and others

Petitioners

Mr. S.K. Mishra, Advocate

-versus-

Kabi Jena

Opp. Party

**CORAM:
JUSTICE G. SATAPATHY**

**ORDER
01.11.2022**

Order No.

- 05.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. The petitioners by way of this application U/S. 482 of Cr.P.C. prays to set aside the order passed on 24.12.2015 by learned S.D.J.M., Bhanjanagar in I.C.C. No. 31 of 2015 taking cognizance of offences U/Ss. 147/148/506/34 of I.P.C. at Annexure-3 and consequently, the entire criminal proceeding arising out of therein vide complaint at Annexure-1.
 3. The facts as exposited in precise are that the O.P. as complainant instituted the complaint in ICC No. 31 of 2015 in the Court of learned S.D.J.M., Bhanjanagar stating therein that on 06.05.2015 and 07.05.2015 two meetings were held in the village Badgunduribadi to resolve the dispute regarding relationship between Petitioner No.5 with son of the O.P. and in such meeting, the son of O.P. admitted his relationship with Petitioner No.5 but refused to marry her and the caste people of Petitioner No. 5 took up the matter at their caste level in a meeting in the premises of Lord Shiva Temple of their village Badgunduribadi on 10.05.2015 and asked the O.P-Complainant to get his son married with Petitioner No.5 but O.P.-Complainant escaped from the meeting. However, the Petitioners in connivance with police

staff of Tarasingi compelled the complainant-O.P. and his wife to get their son married with Petitioner No.5 and they were forced to sign an agreement created for that purpose under threat and coercion by keeping them along with their son in wrongful confinement.

4. Learned counsel for the Petitioners by enclosing the photocopy of certified copy of order sheet dated 12.09.2022 recorded in I.C.C. No. 31 of 2015 submits that the complaint case was posted on 21.10.2022 for further proceeding. The same be kept on record. It is submitted by the learned counsel for the Petitioners that the petitioners have been falsely implicated in the present case and they are not connected with commission of any offence. It is further submitted that the statements of witnesses recorded in an enquiry under Section 202 Cr.P.C. and the initial statement of the complainant are contradictory to each other and if the allegations made in the complaint are considered vis-à-vis the initial statement of complainant and statement of witnesses U/S. 202 of Cr.P.C., no offence either U/S. 148 of I.P.C. or for any offence is prima facie found to have committed by the petitioners and the present complaint has been lodged against the Petitioners with an evil design to get rid of the case lodged by the Petitioner No.5 against the son of the complainant and others for commission of offences under Sections 294/506/109/376/34 of IPC. It is also submitted that the complainant has stated in his initial statement that his son escaped from the custody of accused persons (Petitioners) and the accused persons forced him and his wife to get their son married with Petitioner No.5 and they took his LTI on a blank paper but the same fact as has been narrated by the independent witness No.1 in the enquiry Under Section 202 Cr.P.C. that the police obtained the signature of the

complainant (O.P.) forcibly on an agreement paper and accordingly the O.P. out of fear put his L.T.I. on the agreement paper but the fact remains that the Petitioner No.5 has been assured to be married by son of the O.P.-complainant and on that pretext, he had kept physical relationship with her but when the Petitioner No.5 asked the son of opposite party to marry her, he refused and a meeting was convened in the matter in village in which the son of the complainant admitted his guilt but refused to marry her and therefore, the petitioner No.5 lodged a F.I.R. against the son of the complainant and others in Tarasingh Police Station which was registered for commission of offences one U/S. 376 of I.P.C. and finding no other alternative and in order to get rid of that case, the present complainant(opposite party) has filed the complaint in the Court with all false averments and therefore, the criminal proceeding arising out of such complaint and the impugned order taking cognizance of offences in the complaint are as bad in the eye of law and, therefore, liable to be set aside.

4.1. It is further submitted that the materials on record do not disclose commission of any offence against any of the petitioners and more particularly the offence Under Section 148 of I.P.C. is not at all made out against any of the Petitioners since none of the petitioners were armed with any weapon of offence nor did they commit any rioting and therefore, the order taking cognizance impugned herein being bad in the eye of law is unsustainable. It is accordingly prayed by him to quash the impugned order and the present criminal proceeding arising out of therein.

5. None appears for the O.P. despite service of notice was held to be valid and sufficient.

6. After having considered the submissions advanced for the Petitioners, this Court on perusal of complaint and other documents finds that there are some allegations against the Petitioners but in the present case, the Petitioners have invoked the jurisdiction of the Court under Section 482 Cr.P.C. to quash the impugned order passed by learned S.D.J.M. Bhanjanagar, Ganjam taking cognizance of offence Under Sections 147/148/506/34 of IPC. Law is well settled that complaint can be quashed, if the uncontroverted allegations appearing in the complaint together with the initial statement of the complainant and the substance of enquiry of witnesses U/S. 202 of Cr.P.C. do not constitute any offence and make out a case against the accused persons in view of the mandate of the guidelines laid down by the Apex Court in ***State of Haryana & others Vrs. Ch. Bhajan Lal & others; 1992 (1) SCC 335***. On meticulous and careful scrutiny of the complaint together with initial statement of the complainant and substance of inquiry under Section 202 Cr.P.C., there appears allegation against the Petitioners for tying the hands the son of the complainant, abusing him in filthy language and threatening to kill him. Further, the record reveals convening of meeting of villagers which was also stated to be attended by the above 21 petitioners who have been alleged for tying the son of the complainant, abusing him and threatening him to kill and the above fact of allegation by itself indicate some prima facie materials for forming an unlawful assembly which is very much palpable on cumulative assessment of the uncontroverted averments made in the complaint on the face of initial statement and substance of enquiry.

7. Law is no more res-integra that appreciation of evidence in a proceeding under Section 482 Cr.P.C. is impermissible and merely

because another view is possible from the statement of one or more witnesses if read in isolation with other materials, it would not be safe to exercise the inherent jurisdiction of this Court to quash a criminal proceeding. Undoubtedly learned counsel for the Petitioners has beautifully demonstrated and submitted that no offence is made out against any of the Petitioners but this Court is not convinced with such submission, especially when there are materials against the Petitioners in the complaint as well as in the initial statement and substance of enquiry of witnesses recorded under Section 202 Cr.P.C. It is no doubt true that proceeding arising out of complaint can be quashed if it does not disclose commission of any offence or the cognizance order passed therein by Court concerned without any sound judicial discretion and the same when is considered on the face of uncontroverted allegations made in the complaint together with the initial statement of the complainant and substance of enquiry of the witnesses recorded under section 202 Cr.P.C. do not disclose commission of any offence, which in such circumstance is not only an abuse of process of Court but also is required to be quashed to secure the ends of justice.

8. Inherent jurisdiction of this Court under section 482 Cr.P.C. albeit wide but has to be exercised sparingly with great care and circumspection. If any abuse of the process of Court leading to injustice is brought to the notice of the Court, the Court should not feel reluctant to exercise such power to prevent injustice to prevail over justice. While exercising the inherent power, the Court should ensure that criminal prosecution is not meant to be used as an instrument of harassment or for seeking private vendetta or with an alternate motive to pressurize the accused, but such power should not

be exercised to stifle genuine criminal prosecution. Further, the Court should not give any prima facie decision where the entire facts are appeared to be incomplete and not clear. In this case, the uncontroverted allegations appearing in the complaint and the materials brought on record by the complainant in support of the allegations revealing some prima facie case for commission of offences as found out by the learned Court in the impugned order and this Court, therefore, is not persuaded by the submissions made on behalf of the Petitioner to quash the impugned order.

9. In view of the above facts and taking into consideration the discussion made hereinabove, this Court does not find any justification to exercise its jurisdiction under Section 482 Cr.P.C. to quash the order taking cognizance which has been passed by the learned S.D.J.M. after duly applying his mind which cannot be found to be unsustainable on a conspectus of averments made in complaint together with the initial statement of the complainant and substance of enquiry of the witnesses recorded under section 202 Cr.P.C.

10. In the result, the CRLMC stands dismissed but without any cost.

(G. Satapathy)
Judge