

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1145 of 2012

Ainul Saha

....

Petitioner

Mr. D.N. Mohanty, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. A.P. Das, ASC

CORAM:
JUSTICE R.K. PATTANAİK

ORDER

06.05.2022

Order No.

10.

1. Heard learned counsel for the petitioner and learned counsel for the State.

2. Application under Section 482 Cr.P.C. is filed by the petitioner challenging the order of cognizance dated 5th December, 2011 under Section 307 IPC in G.R. Case No.248/11 arising out of Marshaghai P.S. Case No.36/11 of 2011 pending in the court of learned S.D.J.M, Kendrapara on the stated grounds.

3. In fact, an F.I.R. was lodged by the informant, namely, a Home Guard with the allegation that on the date of occurrence during night of 12/13th March 2011, while he and other officials were on patrol duty, at that point time, a truck bearing registration No.OR-04-L-7611 approached them on a wrong route for which the driver was signaled to stop but it was not responded. It has been alleged therein that the driver not only disobeyed the signal but deliberately dashed the truck against the police vehicle with an intention to cause injuries to him and others. After the F.I.R. was lodged, a case under Section 307 IPC was registered and finally,

charge sheet was submitted against the petitioner which is presently under challenge.

4. Learned counsel for the petitioner submits that it was merely an accident without any deliberate act or intention on the part of the accused as has been alleged in the F.I.R. which is revealed from the documents, such as, Annexures-4 and 5, which is in fact, a claim case filed before the 1st MACT, Cuttack by one of the Home Guards and therefore, considering the same, the order of cognizance under Section 307 IPC cannot be sustained and thus, to be set aside.

5. Learned counsel for the State, on the other hand, justified the impugned order dated 5th December, 2011 on the ground that there is a prima facie case made out after having perused the F.I.R. and other materials for which the charge sheet was filed under Section 307 IPC and hence, it needs no interference.

6. In fact, from Ext.5 it appears that one of the Home Guards present at the spot has filed a claim case in the court of 1st MACT, Cuttack seeking compensation for self injury which he had received during the incident by claiming that the accident had taken place on account of the rash and negligent driving by the driver, referring to which, the learned counsel for the petitioner submits that it was indeed an accident and therefore, no intention of malafide can be attributed to his conduct.

7. The F.I.R. has been lodged by another Home Guard, who was present inside the vehicle at the relevant point of time and according to his version as reflected in the F.I.R., the driver of the alleged vehicle was instructed to stop as it was approaching on the wrong side of the road but then the signal was not obeyed and

consequently, it deliberately dashed the police vehicle causing damage to it as well as injuries to the staff on duty.

8. Having regard to the allegations made in the F.I.R. and final charge sheet under Section 307 IPC having been filed, whereupon, the learned court below has taken cognizance of, the Court is not persuaded to interfere with the order of cognizance dated 5th December, 2011 simply by referring to Annexure-5 which is a claim case before the 1st MACT, Cuttack filed by one of the Home Guards. At this stage, merely accepting Annexures-4 and 5, it would not be proper to interfere with the order of cognizance dated 5th December, 2011 and such defence which in any case would be available to the petitioner for being raised during trial.

9. In the result, the Court is not inclined to interfere and set aside the order of cognizance dated 5th December, 2011.

10. Consequently, the CRLMC stands dismissed.

(R.K. Pattanaik)
Judge