

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3494 of 2014

Jurinath Swain

.... **Petitioner**
Mr. R.L. Pradhan, Advocate

-Versus-

State of Odisha

.... **Opposite Party**
Mr. S.N. Das, ASC

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
29.07.2022

Order
No.

17. 1. Heard learned counsel for the petitioner and learned counsel for the State.
2. The present petition under Section 482 Cr.P.C is filed by the petitioner for quashing of the criminal proceeding in G.R. Case No.205 of 2007 arising out of Aska P.S. Case No.130 of 2007 pending before the court of learned J.M.F.C., Aska on the grounds stated therein.
3. Learned counsel for the petitioner submits that at the relevant point of time when the complaint was filed, the petitioner as the Secretary of the concerned GP alleged to have forged certain papers and misappropriated Government money which was subsequently demanded from the complainant by the BDO is outrightly false and therefore, the order of cognizance of the learned court below under the alleged offences to the bad in law. It is further submitted that the complainant himself admitted and paid an amount of Rs.31,146.54/-

out of the due i.e. Rs.77,620.78/- and also submitted an undertaking to pay the rest amount and therefore, when he has admitted and solely being responsible for the alleged misappropriation, the petitioner could not have been criminal prosecuted, the fact which was completely lost sight of by the learned court below.

4. Mr. Das, learned ASC on the other hand submits that as to who, whether, the complainant or the petitioner to be responsible for the alleged misappropriation can only be examined during trial and cannot not be evaluated by this Court and that apart, nowhere the complainant ever admitted about the alleged misappropriation which has been claimed by the learned counsel for the petitioner.

5. Initially, a complaint was filed vide I.C.C. No.31 of 2007 which was subsequently registered as Aska P.S. Case No. 130(17) dated 20th May, 2007 under the Sections 420, 408, 465 IPC and other allied offences and after completion of investigation, the charge sheet was submitted and thereafter, the court below took cognizance by order dated 3rd January, 2013 which is at Annexure-3.

6. Regarding misappropriation of the Government money to the tune of Rs.77,620.78/-, it has been alleged by the complainant holding the petitioner to be responsible. In consider view of the Court, it can only be examined by the learned court below and a decision thereon may be rendered at the end of the trial. In fact, the contention of the learned counsel for the petitioner that the complainant admitted himself about the due paid by him and even deposited Rs.31.146.54/- is misplaced for the fact that on a bare reading of the complaint itself, he even though paid back the above amount but alleged fraud against the petitioner and also claimed that he was forced to submit an undertaking to pay the rest amount. The Court is of the view that

truthfulness or otherwise of the allegation made by the complainant and a decision as to whom to be held responsible for the alleged misappropriation requires factual determination an exercise which is to be undertaken during trial. In other words, the Court does not find any ground to interfere and quash the criminal proceeding pending before the learned court below which is to reach its logical conclusion after receiving evidence. The petitioner raised certain grounds by claiming that the complainant himself to be responsible shall have liberty to raise it before the court below during such trial.

7. Accordingly, it is ordered.

8. In the result, the CRLMC stands dismissed. The interim order dated 1st August, 2014 in M.C. No.2468 of 2014 passed by this Court is hereby vacated.

(R.K. Pattanaik)
Judge

TUDU