

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.5416 of 2015

Rahuldev Berma

Petitioner

Mr. B.B. Mishra, Advocate

-Versus-

State of Orissa and Another

.... Opposite Parties

Mr. T.K. Praharaj, SC

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
26.10.2022

Order
No.

9.

1. Heard learned counsel for the petitioner and learned counsel for the State. None appears for opposite party No.2.

2. Instant petition under Section 482 Cr.P.C. is filed at the behest of the petitioner for quashing of the order of cognizance under Annexure-3 in C.T. Case No.599 of 2013 pending in the file of learned J.M.F.C.-cum-Additional Civil Judge, (J.D.), Khariar on the grounds stated therein.

3. Copy of the FIR which is at Annexure-1 is perused by the Court.

4. Learned counsel for the petitioner submits that a report was lodged by opposite party No.2, consequent upon which, Khariar P.S. Case No.255 (13) dated 15th November, 2013 was registered under Section 409 IPC. It is submitted that there was contract between the petitioner and opposite party No.2 and in that connection, an agreement was entered into which contained an arbitration clause but when a dispute arose, opposite party No.2 instead of holding any enquiry and without invoking the arbitration clause lodged the FIR with the allegation that the material value of

Rs.46 lac and some odd was blocked by the petitioner. According to learned counsel for the petitioner, the petitioner was sub-contractor of opposite party No.2 and was assigned with the project. It is contended that opposite party No.2 could not have lodged the FIR against the petitioner as the work was in progress and some of the materials had been utilized and some other held back for certain reasons which should have been duly enquired into.

5. Mr. Praharaj, learned SC submits that it is a case of breach of trust and the petitioner has been chargesheeted under Section 409 IPC and considering the allegations contained in the FIR, a copy of which is at Annexure-1, the learned court below did not commit any error or illegality in passing the impugned order of cognizance under Annexure-2 and therefore, it should not be interfered with.

6. Learned counsel for the petitioner refers to a copy of the agreement as at Annexure-4 to suggest that the petitioner was entrusted with work but in the said agreement, according to him, in case of any dispute, the matter to be settled through arbitration by referring to clause-17 thereof. Learned counsel for the petitioner submits that an arbitration clause is in place to refer disputes before the Arbitrators and that the proceeding to be governed by the provisions of the Arbitration and Conciliation Act, 1996.

7. In so far the FIR is concerned, the allegations as put forth by opposite party No.2 is that some of the items were blocked by the petitioner, the value of which stands at Rs.46 lac and some odd. According to learned counsel for the petitioner, if there was any such dispute between the parties, opposite party No.2 ought to have invoked the provision of arbitration as per clause-17 of Annexure-4. It is submitted that the dispute is entirely based on contractual obligation inter se the parties and therefore, the criminal action cannot be sustained and hence, the impugned order under Annexure-3 should be quashed in the interest of justice.

8. Having regard to the facts and circumstances under which the FIR was lodged and the fact that the parties did have an agreement under Annexure-4 which contained clause 17 whereby they are to approach the Arbitrators, opposite party No.2 if at all had any such dispute, it should have invoked such provision but instead lodged the FIR. Considering the nature of allegations and the dispute so raised by opposite party No.2, it does appear that the same is civil in nature arising out of a contract entered into between the parties under Annexur-4 and therefore, the conclusion of the Court is that opposite party No.2 could not have straightaway lodged the FIR against the petitioner, rather, should have invoked the arbitration clause of the agreement for resolution of the dispute and hence, under such circumstances, the criminal proceeding should not be allowed to continue and hence, required to be quashed in the interest of justice.

9. Accordingly, it is ordered.

10. In the result, CRLMC stands allowed. Consequently, criminal proceeding in C.T. Case No.599 of 2013 pending before the court of learned J.M.F.C.-cum-Additional Civil Judge, (J.D.), Khariar is hereby quashed.

11. An urgent certified copy of this order be granted as per rules.

(R.K. Pattanaik)
Judge