

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.898 of 2002

Dr. Nalini Sharma.

....

Petitioner

-versus-

State of Odisha.

....

Opposite Party

CORAM: JUSTICE S.PUJAHARI

ORDER
20.06.2022

Order No.

09.

1. This matter is taken up through Hybrid mode.
2. The petitioner in this application under Section 482 of the Code of Criminal Procedure (for short “Cr.P.C.”) has prayed for quashing of the order dated 28.10.2002 passed by the learned S.D.J.M., Kamakshyanagar in G.R. Case No.243 of 2002 taking cognizance of the offences under Sections 493, 417, 506, 313, 306, 114/34 of IPC.
3. Heard the learned counsel for the petitioner and the learned counsel for the State. The Informant in this case has not been impleaded as a party.
4. Learned counsel for the petitioner submits that no doubt the Court has jurisdiction to take cognizance of the offences

against any accused not sent up for trial by police, as the opinion formed by the police in the Final Form is not binding on the Court, but there must be material to indicate that prima-facie case is there against the accused concerned and the same must be for good reasons. The Court in this case though has given reasons while taking cognizance, but the same are not sufficient to proceed against the petitioner and, as such, the impugned proceeding against the petitioner be quashed.

5. Learned counsel for the State, however, defends the impugned order.

6. On consideration of the facts and submissions made, so also the law that the Court at the stage of taking cognizance is not required to go through the materials on record in detail, but to see a prima-facie case as to whether the ingredients of particular offence, for which cognizance is taken, are made out or not and if that be so, the Court can take cognizance of the said offence. Since from the materials available on record as placed it cannot be said that the learned Magistrate without going through the materials available on record took cognizance of the offences mechanically and also decided to proceed against the petitioner, this Court is not inclined to interfere with the impugned order of cognizance and the proceeding against the petitioner.

7. Therefore, this CRLMC filed challenging the impugned order being devoid of merit stands dismissed. However, liberty

is given to the petitioner to raise all such contentions at the time of framing of charge and then the Court shall consider the same in accordance with law notwithstanding the reluctance of this Court to interfere with the impugned order of cognizance and proceeding against the petitioner, as at that stage the Court is required to have scrutiny to some extent of the materials on record, taking note of the contentions raised, to proceed against the petitioner on a particular offence.

8. However, since it is stated by the learned counsel for the petitioner that the petitioner is a doctor and he is not on bail and now he is ready and willing to appear before the Court below and move for bail, this Court directs that if the petitioner surrenders and move for bail in the aforesaid case before the Court in seisin over the matter within eight weeks hence, the Court in seisin over the matter shall allow him to go on bail on such terms and conditions as deemed just and proper, provided he is not indicted in any other graver offence.

9. A copy of this order be communicated to the Court below forthwith.

(S. Pujahari)
Judge

MRS