

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1964 of 2012

Utkal Keshari Parida

....

Petitioner

-versus-

State of Orissa

....

Opposite Party

CORAM: JUSTICE S. PUJAHARI

ORDER
24.06.2022

Order
No.

06.

1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order dated 8th August 2011 passed by the learned S.D.J.M., Kendrapara in G.R. Case No.30 of 2006, taking cognizance of offences under Sections 147/148/448/294/307/427/332/353/338 read with Section 149 of I.P.C. and Section 3 of Prevention of Destruction of Public Property Act, 1984 and issuance of process against him.
3. Heard learned counsel for the Petitioner and the learned counsel for the State-Opposite Party.
4. As it appears, on 24th January, 2006 at about 11.00 A.M., while the Informant, who is a Additional Project Director (Administration), D.R.D.A., Kendrapara, was sitting in his office and discharging his official duty, he came to know that

the Petitioner, who was the M.L.A. Kendrapara along with his supporters have gathered in the premises of the office of Zilla Parishad President. Hearing loud voice, he came to the office of Zilla Parishad President and came to know that some of the miscreants assaulted Sri Rabindranath Kar, the Project Director, District Rural Development Agency and he was severely injured. Those miscreants stated to be supporters of the present Petitioner, who was the then M.L.A., Kendrapara. The injured was taken to Kendrapara Hospital for treatment but after preliminary treatment, he was shifted to S.C.B. Medical College & Hospital, Cuttack. Hence, this case.

5. During the time of investigation, it came to light that though the present Petitioner was there near the spot and the miscreants are his supporters, but no over overt act has been attributed to the Petitioner in any manner, is not disputed by the learned counsel for the State.

6. Learned counsel for the Petitioner submits that because the Petitioner was the local M.L.A. and when the offence was committed by some of his supporters in a place near which he was present, the same is not sufficient to indict him in a case. In the absence of any evidence direct or circumstantial that the Petitioner abetted or instigated the commission of the offence or participated in the commission of the offences, as because his supporters committed the crime in a place near which he was present, the implication of the Petitioner in this case was misconceived. The court, therefore, could not have

mechanically accepting the opinion formed by the police, who might have wantonly or bonafidely form such opinion and proceeded against the Petitioner by issuing the process. Hence, there being no material against the Petitioner to indict him in this case, the issuance of process against him and the proceeding qua the Petitioner is liable in the said Criminal Misc. Case is liable to be quashed.

7. However, learned counsel for the State has defended the order impugned.

8. Summoning the accused in a criminal case is serious matter. A criminal law cannot be set to motion in a routine manner. The court, therefore, while summoning a person as an accused in criminal case, must scrutinize the material placed by police carefully, for its satisfaction, to proceed against a person challaned as the same put to a person summon, if innocent to a lot of agony. For the said purpose, it has been mandated in law that the opinion formed by the police on completion of the investigation is not binding on the court. The court has to independently formed its opinion on receipt of the opinion from the police officer to prevent the statutory power conferred on the police of being abused and not mechanically accept the same. The same is more so as at times, the police wantonly or bonafidely may not challan an accused even though he has committed the offence or may challan some of the persons, who are innocent. Therefore, the court must independently scrutinize such report and it is only in the circumstances when the

materials on record prima facie discloses the involvement of a person irrespective of the fact that he is challaned by the police or not, should issue process against him.

8. Reverting back the case in hand, in the light of the aforesaid settled position of law, when the materials on record as placed is scrutinized, it appears to this Court that the learned Magistrate without scrutinized the materials available, issued process against the Petitioner in a mechanical manner though no incriminating material was available against him for abetment of the offence or instigating for commission of the offence, as he contributed commission of the offence in any manner.

9. I would, therefore, allow this Criminal Misc. Case and quash the impugned order as well as the entire criminal prosecution launched against the Petitioner. The trial court shall do well to comply with this order on production of the certified copy of this order.

10. Urgent certified copy of this order be granted on proper application.

(S. Pujahari)
Judge

DA