

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2647 of 2011

Sipra Sethy & another* *Petitioners

-versus-

State of Odisha & another* *Opposite Parties

CORAM: JUSTICE S.PUJAHARI

ORDER

11.04.2022

Order
No.

- 04.
1. This matter is taken up through hybrid mode.
 2. Heard learned counsel for the Petitioners and the learned counsel for the Opposite Parties.
 3. This application under Section 482 of Cr.P.C. has been filed by the Petitioners for quashment of the order dated 19.07.2011 passed by the learned S.D.J.M., Boudh in ICC No.6 of 2011 wherein the learned S.D.J.M. has taken cognizance under Sections 448/427/294/506/34 IPC against them.
 4. Heard learned counsel for the Petitioners. None appears for the Opposite Party No.2.
 5. From the materials available on record, it appears that the Petitioners have been indicted in the aforesaid offences. The Petitioners have sought for quashment of the cognizance on the ground that the aforesaid allegation having reasonable connection in due discharge of the official duty, therefore,

without sanction the court could not have proceeded against the Petitioners.

6. As it appears from the materials available on record the Petitioners stated to have demolished the house and dismantled one portion of the building of the Opposite Party No.2 without giving any prior notice to him, so also show cause notice. Therefore, the aforesaid offences stated to have been committed. Admittedly, the Petitioners are public servants. The aforesaid allegations having reasonable connection in due discharge of the official duty, the court could not have proceeded without sanction of the Government inasmuch as Section 197 Cr.P.C. mandates as thus;

“197. Prosecution of Judges and public servants-(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction”

7. So also the apex Court in the case of **Matajog Dobey vrs. H.C. Bhari** reported in **AIR 1956 SC 44** have held as thus:

“In *Shreekantiah Ramayya Munipalli v. The State of Bombay*(1), Bose, J. observes as follows: "Now it is obvious that if section 197 of the Code of Criminal Procedure is construed too narrowly, it can never be applied, for of course, it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning". The question of previous sanction also arose in *Amrik Singh v. The State of PEPSU*(6). A fairly lengthy

discussion of the authorities is followed up with this summary: "If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under section 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required".

8. Considering the aforesaid facts and the submissions made and also the law laid down as above, this Court allows this Criminal Misc. Case and quashes the entire criminal proceeding in connection with ICC No.6 of 2011 pending in the court of learned S.D.J.M., Boudh qua the Petitioners. The court concerned shall do the needful to close the proceeding in view of the aforesaid order, on receipt of the certified copy of this order

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

(S.Pujahari)
Judge

PKS