

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1793 of 2007

Sakira Bibi @ Khatun & 8 others.* *Petitioners

M/s. Samir Kumar Mishra, M.R. Dash,
S.K. Samantaray, O.P. Sahu, A. Kejriwal, Advocates

-versus-

State of Orissa & another.* *Opposite Parties

Addl. Standing Counsel – For State
M/s. S. Swain, P. Das, S.C. Das, Advocates – For O.P. No.2

**CORAM:
JUSTICE S. PUJAHARI**

**ORDER
03.02.2022**

**Order
No.**

24. **1.** This is an application filed under Section 482 of Cr.P.C. seeking for quashment of the order dated 07.07.2007 passed by the learned J.M.F.C., Soro in Crl. Tr. (I.C.C.) No.44 of 2007 taking cognizance of the offences under Sections 395 and 457/34 of I.P.C., so also the entire proceeding, qua the petitioners.
- 2.** Heard the learned counsel for the petitioners and the learned Addl. Standing counsel appearing for the State. None appeared for the opposite party no.2-complainant on call to participate in the hearing.

3. The brief reference may be made to the factual aspects as follows:-

On the report of the present opposite party no.2, there was registered Soro P.S. Case No.94 of 2006 corresponding to G.R. Case No.198 of 2006 against the present petitioners and seven co-accused persons under Sections 457/395 of I.P.C. On completion of investigation, however, police submitted charge-sheet under Section 380 of IPC against the present petitioner nos.1 and 2 on 13.12.2006, eliminating the other accused persons from the charge and pursuant to the same, the learned J.M.F.C., Soro also recorded his opinion vide the order dated 13.12.2006 that a prima-facie case under Section 380 of IPC was well made out against the petitioner nos.1 and 2 as charge-sheeted. At the same time, however, the learned Magistrate issued notice to the Informant to file his protest, if any, against the charge-sheet / Final Form so submitted by the police. Thereafter, the Informant-opposite party no.2 came up with a protest petition which was registered as

I.C.C. No.175 of 2006, and the learned Magistrate vide the order dated 18.01.2007 directed the said complaint to be tagged with the G.R. Case, to avoid multiplicity of the proceeding. In the same order, he further observed that the complainant can take recourse of law under Section 319 of Cr.P.C. during time of the trial. The matter, however, did not end there. Subsequently, the Informant filed a separate complaint which was registered as I.C.C. No.44 of 2007 and there upon the learned J.M.F.C. proceeded under Chapter XV of Cr.P.C. and on the basis of the statements recorded under Sections 200 and 202 of Cr.P.C. he took cognizance of offences under Sections 395/457/34 of IPC against all the petitioners vide the impugned order dated 07.07.2007.

4. It is now the contention of the petitioners that the faulty procedure adopted by the learned J.M.F.C. has exposed the petitioner nos.1 and 2 to double jeopardy, and that the rest of the petitioners have also been subjected to gross prejudice, inasmuch as with the materials on record, no criminality can be

attributed to them. In course of the hearing, the learned counsel for the petitioners submitted that the petitioner no.2 being the daughter of the Informant who was opposed to her marriage with the petitioner no.1, false and vexatious criminal cases have been filed by the Informant to wreck his vengeance. It is his further submission that the learned J.M.F.C. committed illegality in passing the impugned order in the face of his earlier observation vide the order dated 18.01.2007 in I.C.C. No.175 of 2006. According to him, the impugned order being tantamount to a review of the earlier order dated 18.01.2007 is not permissible under law, and liable to be quashed.

5. On the other hand, the learned Addl. Standing counsel appearing for the State submits that the learned J.M.F.C. having passed the order on the basis of the materials on record, and the Codal procedure having been followed, no interference therewith is called for.

6. As it appears, the learned J.M.F.C., Soro being oblivious of the provision under Section 210 of

Cr.P.C. proceeded with the matter in a wrong direction, for which the proceedings became clumsy and cumbersome. For a ready reference, Section 210 of Cr.P.C. is reproduced here below;

“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.- (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.”

7. In the case at hand, to reiterate, the police filed charge-sheet under Section 380 of IPC against two accused persons only, who are arraigned as petitioner nos.1 and 2 herein. Thus, the learned Magistrate has not differed with the opinion of the police as above,

and rather in the order dated 13.12.2006 he observed as follows:-

“C.S. No. 289 dt.03-12-06 U/s.380 IPC against the accd. Persons namely (1) Sk. Muktar Hassen, S/o. Abdul Sattar, (2) Sakina Bibi, W/o. Sk. Muktar Hussen both of vill- Mabarapur, P.S.- Soro, Dist- Balasore, is received today. Perused the CAS and F.F. Prima facie case U/s.380 IPC well made out against the accd. Persons. But today prosecution has filed a petition with decision of Apex Court Mini Kumari vrs. State of Bihar, reported in OCR 34 (SC) 235 to that effect that, if C.S. submitted by I/O is against some of accused persons named in F.I.R. eliminating others, it becomes mandatory to issue notice to informant to protest. Hence, Issue notice to informant fixing dt.13.02.07. Put up on the date fixed.”

8. It is, therefore, deemed that cognizance of offence under Section 380 of IPC was taken against the present petitioner nos.1 and 2 in G.R. Case No.198 of 2006. In so far as the present petitioner nos.3 to 9 are concerned, although they had been named in the F.I.R. as co-accused persons, police did not charge-sheet them for any such offence, and the Informant filed protest petition which was registered as I.C.C. No.175 of 2006. But, the Magistrate instead of following the procedure as laid down under Chapter-XV of the Code, tagged the complaint case with the aforesaid G.R. Case. Subsequently, the

Informant filed a separate complaint registered as I.C.C. No.44 of 2007, and the learned Magistrate purportedly has followed the procedure under Chapter-XV of the Code and passed the impugned order. The impugned order appears to be illegal, inasmuch as the same exposed the petitioner nos.1 and 2 to double jeopardy. That apart, taking of cognizance under Sections 457 and 395 of IPC against the petitioner nos.1 and 2 also amounted to review of the order dated 13.12.2006 passed in G.R. Case No.198 of 2006. The complaint case bearing No.I.C.C. 44 of 2007, however, could have been maintained against the petitioner nos.3 to 9 in view of Section 210 of Cr.P.C. To prevent abuse of process of the Court, this Court, therefore, directs as follows;

- (i) Although there is no specific order of cognizance in G.R. Case No.198 of 2006, in view of the order dated 13.12.2006 passed by the learned J.M.F.C., Soro therein, the said G.R. case shall run

against the petitioner nos.1 and 2 for the offence under Section 380 of IPC.

(ii) I.C.C. No.44 of 2007 shall be maintained as against the petitioner nos.3 to 9, but the impugned order dated 07.07.2007 being not in accordance with law, is hereby quashed.

(iii) Since the procedures as contemplated under Sections 200 and 202 of Cr.P.C. in I.C.C. No.44 of 2007 have been exhausted, the learned J.M.F.C., Soro on reappraisal of the materials shall re-visit the question of cognizance for proceeding against the petitioner nos.3 to 9 in the said complaint case. While so doing, he shall apply his judicial mind to the background facts and the materials on record to find out if any prima-facie case for any offence(s) is made out against the petitioner nos.3 to 9 who have been left

out by police vide the charge-sheet submitted in G.R. Case No.198 of 2006.

9. With the directions as above, this CRLMC stands disposed of. The learned J.M.F.C., Soro, shall do well to expedite the proceeding keeping in view the oldness of the case.

10. As restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout copy of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021 and Court's Office order circulated vide Memo Nos.514 & 515 dated 7th January, 2022.

(S.Pujahari)
Judge

MRS