

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1028 of 2008

Mahimananda Mishra @ Mahima Petitioner
Mishra.

*M/s. S.C. Mohapatra, P.M. Mohapatra,
P.S. Acharya, S. Mohapatra, Advocates*

-versus-

State of Odisha. Opposite Parties
Addl. Standing Counsel – For O.P.-State

**CORAM:
JUSTICE S. PUJAHARI**

ORDER
13.09.2022

Order
No.

48. **1.** This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) by the petitioner seeking for quashing of the order dated 06.02.2008 passed by the learned SDJM, Hindol in G.R. Case No.106 of 2006 taking cognizance of the offences under Sections 147, 148, 341, 323, 294, 506, 120-B, 109, 307 and 149 of IPC, Section 9(b) of the I.E. Act, Sections 25 & 27 of the Arms Act

and Section 3 of the S.C. & S.T. (PoA) Act against him.

2. Heard the learned counsel for the petitioner, and the learned counsel appearing for the State-opposite party. Perused the relevant papers on record.

3. The case of the prosecution, as it reveals from the F.I.R. and other police papers that on 20.05.2006 while the informant and others were returning after stopping the construction of boundary wall at the site of Bhusan Steel Plant, a large number of people hurled bombs at them and opened bullet shots causing injuries to various persons, and those assailants also uttered abusive words at the victims with caste aspersion. It is further alleged by the Informant that the entire incident was instigated by the present petitioner, inasmuch as the victims overheard talking of the assailants with the petitioner over mobile phone. It is further alleged that prior to the date of the case incident when the informant and

other villages had stopped the construction of boundary wall, on 28.04.2006 the petitioner and some of his associates had threatened them with dire consequences if they stopped the construction of boundary wall. Police upon registration of FIR conducted investigation, and submitted charge-sheet against the petitioner and other accused persons and the learned SDJM took cognizance of the aforesaid offences.

4. The learned counsel for the petitioner submits, inter-alia, that the petitioner has been charge-sheeted without any legal evidence showing his involvement, and the learned SDJM has mechanically taken cognizance of the offences against him. He points out that when the petitioner was not present at the spot, most of the offences including the one under the S.C. & S.T. (PoA) Act as taken cognizance of, can not be attributed to the petitioner. It is his contention that continuance of the proceeding against the petitioner is a sheer abuse of the process of the Court,

inasmuch as there is no foundational case much less legal evidence to warrant a conviction against him.

5. The learned counsel for the State, on the other hand, submits that since the Court below has already taken cognizance of the offences on the basis of a prima-facie view, at the appropriate stage of the proceeding, the accused-petitioner may raise his points before the trial Court at appropriate stage as to which particular offences or charges are not applicable to or prima-facie not made out against the petitioner. It is his further submission that since the petitioner is alleged to have hatched criminal conspiracy and abetted the crime, no direct evidence should be insisted upon at the stage of taking cognizance or framing charge.

6. Before addressing the contentions of the parties, it would be apposite to have a look the law laid down by the Apex Court in the case of **R.P.**

Kapur vrs. State of Punjab, reported in AIR 1960

S.C. 866, wherein the Apex Court held as under:-

“xxxxxx It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases

it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. xxxxxxxx”

7. Admittedly, the petitioner was not present at the spot at the time of the alleged incident. Basing upon the statements of some of the witnesses examined in course of investigation that the petitioner on some earlier occasions had intimidated the villagers with a view to dissuade them from opposing construction of the wall in question. It is further alleged that at the time of the alleged case incident the assailants were also found being engaged in talking with the petitioner over mobile phone. The

petitioner, therefore, has been charge-sheeted as a conspirator or abettor of the case incident.

8. 'Conspiracy' means a combination of two or more persons for unlawful purpose, and the same by itself being an offence, every person who is a party to such criminal conspiracy is liable for punishment under Section 120-B of IPC. The essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. Since the conspiracies are not always hatched in open, they can be proved even by circumstantial evidence. But, when circumstantial evidence is produced by the prosecution, the Court must enquire whether the persons charged with criminal conspiracy were independently pursuing the same end or they had come together to the pursuit of the unlawful object forming subject matter of the case. As depicted from the record in the present case, the allegations made against the petitioner fall under the third category of the cases as indicated in the judgment of the Apex Court in the case of **R.P. Kapur**

(supra). There appears to be no legal evidence in the present case in support of the prosecution allegation that the petitioner abetted the alleged case incident or hatched a conspiracy with the co-accused persons to commit the alleged offences. Taking note of the nature of the accusation against the petitioner vis-à-vis the materials on record, and keeping in view the settled principle of law, this Court is inclined to invoke its inherent jurisdiction under Section 482 of Cr.P.C. for quashing of the impugned order and the consequential proceeding in G.R. Case No.106 of 2006 in the file of the learned SDJM, Hindol, qua the petitioner.

9. In the result, the CRLMC stands allowed, and the impugned order as well as the consequential proceeding in G.R. Case No.106 of 2006 in the file of the learned SDJM, Hindol stands quashed qua the petitioner.

(S.Pujahari)
Judge