

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.487 of 2011

Tikeswar Kanhar *Petitioner*
versus-
State of Orissa and another *Opposite Parties*

CORAM: JUSTICE S. PUJAHARI

ORDER
22.06.2022

Order
No.

11. 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 of cognizance dated 22nd May, 2010 passed by the learned S.D.J.M., Phulbani in G.R. Case No.330 of 2009.
3. Heard the learned counsel for the Petitioner and the learned counsel for the State-Opposite Party No.1. No one appears on behalf of the Opposite Party No.1 in spite of sufficiency of service.
4. Petitioner has sought for quashment of the order of cognizance in a proceeding under Section 125 of Cr.P.C. has not deposed anything against the Petitioner regarding torture, the allegation made in the aforesaid case is without any substance. Hence, the order of cognizance as well as proceeding against him is liable to be quashed.
5. Learned counsel for the State, however, submits that the aforesaid is no ground to discard the material collected during the

investigation to come to a conclusion whether prima facie material is there or not against the Petitioner.

6. In the case of ***Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., reported in (2000) 3 SCC 269***, the Apex Court have held as follows:-

“Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgement of first information report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the court on a perusal of the complaint comes to a conclusion that the allegations leveled in the complaint or charge-sheet on the face of it do not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law. To exercise powers under Section 482 of the Code, the complaint in its entirety will have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear ex facie on the complaint. The truth or falsity of the allegations would not be gone into by the Court at this earliest stage. Whether or not the allegations in the complaint were true is to be decided on the basis of the evidence led at the trial.

7. It is only in cases when the allegations in the complaint do not make out any case against the accused nor do they disclose the ingredients of an offence alleged against the accused or the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion that there is sufficient ground for proceeding against the accused, the power under Section 482 Cr.P.C. has to be exercised to quash the prosecution, is also the view in the case of *Medchl Chemicals & Pharma (P) Ltd.* (supra). Besides the same, if any statutory bar is there to proceed against the accused persons, the Court shall also not proceed against them.

8. On consideration of the facts and submissions made as well as the law laid in the case of *Medchl Chemicals & Pharma (P) Ltd.* (supra), this Court is of the view that the impugned order of cognizance and proceeding against the Petitioner does not require any interference, as the case of the Petitioner is not covered by any of the circumstances as laid down in the case of *Medchl Chemicals & Pharma (P) Ltd.* (supra) for quashment of the prosecution.

9. Accordingly, the CRLMC stands dismissed.

(S. Pujahari)
Judge

DA