

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2832 of 2010

Ramesh Chandra Panda. ***Petitioner***

M/s. Ashok Mishra, S.C. Ratha, Advocates

-versus-

C.K. Ganesh. ***Opposite Party***
M/s. Sidhartha Das, P.R. Singh, L.N. Rayatsingh, R. Ghadei,
Advocates – For O.P. No.2

CORAM:
JUSTICE S. PUJAHARI

ORDER
23.08.2022

Order
No.

11. **1.** This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) seeking for quashing of the order dated 25.09.2010 passed by the learned S.D.J.M., Nabarangpur in I.C.C. No.23 of 1992, vide which a petition filed by the present petitioner to recall the order of cognizance dated 30.07.1993 passed in I.C.C. No.23 of 1992 was rejected.

2. Heard the learned counsel for the parties and perused the impugned order and other papers on record vis-à-vis the contentions raised by the petitioner vide his application at hand.

3. The aforesaid prosecution has been instituted pursuant to a complaint being filed by the opposite party in the court of the learned SDJM, Nabarangpur, on the allegations that on 30.05.1992 the petitioner, who at the relevant time was working as Sub-Inspector of Excise locked the Foreign Liquor shop standing in the name of the wife of the opposite party at Nabarangpur without any documentation, by giving threat to the Salesmen of the shop. It is further alleged that on 04.06.1992 the petitioner again came to the said liquor shop with some liquor bottles and kept the same inside the shop and on 05.06.1992 at 11 A.M. the petitioner again came to the said shop and removed the articles from the store room of the shop without preparing any seizure list. It is further case of the opposite party that when he asked the

petitioner about the matter, the petitioner threatened him with dire consequences and to ruin his business, inasmuch as the opposite party-complainant was not paying the monthly quota of bribe to the petitioner. The learned S.D.J.M., Nabarangpur on recording the initial statement of the complainant and the statements of the witnesses in an enquiry under Section 202 Cr.P.C. took cognizance of the offences aforesaid and issued process against the petitioner vide the order dated 30.07.1993. Then, the petitioner moved an application on 03.02.1999 before the S.D.J.M., Nabarangpur seeking to recall the aforesaid order of cognizance on the ground, inter-alia, that no prosecution could have been launched against him without the requisite sanction under Section 197 Cr.P.C. The learned S.D.J.M., Nabarangpur vide the order dated 25.09.2010 having rejected the said petition, the petitioner has approached this Court with the present application.

4. In course of hearing, the learned counsel appearing for the petitioner submitted, inter-alia, that the allegations made by the complainant at its face value do not make out any case against the petitioner, who in discharge of his official duty took the action as alleged by the complainant. It is his further submission that the learned S.D.J.M. while passing the impugned orders remained oblivious of the aforesaid facts and failed to consider the application of the mandatory provision under Section 197 of Cr.P.C. in right perspective.

5. On the other hand, the learned counsel appearing for the opposite party supports the impugned order dated 25.09.2010 as well as the order of cognizance on the ground, inter-alia, that the materials placed before the Court below at the time of taking cognizance well made out the offences alleged, and that the learned S.D.J.M. recorded sufficient reason vide the impugned orders negating the necessity of sanction under Section 197 of Cr.P.C.

6. Admittedly, the petitioner was serving as Sub-Inspector of Excise at the relevant time. Needless to mention that it was well within his power and jurisdiction to inspect the liquor shop within his local limit, for the purpose of ensuring due compliance with the provisions of law in the matter of sale of Foreign liquor. In that view of the matter, and taking note of the nature of accusation attributed to the petitioner-public servant, it can hardly be denied that the action taken by him was in purported discharge of his official duty. It is further reported that for the seizure of the stock effected by the petitioner from the shop of opposite party on account of possession of excise stock beyond the book balance in contravention of the provisions of law, the opposite party-complainant was prosecuted in 2(a) C.C. Case No.275 of 1992 which ended in conviction as per the judgment dated 25.08.2000 passed by the learned S.D.J.M., Nabarangpur. The prosecution launched by the opposite party through a private complaint, therefore, prima-facie appears to be a counter blast to

the action taken by the petitioner-public servant against him.

7. In the case of **State of Haryana vrs. Bhajan Lal**, reported in 1992 Supp.(1) SCC 335 their Lordships of the Apex Court have been pleased to illustrate the circumstances under which this Court can interfere with a criminal proceeding at its threshold, by invoking the power under Section 482 of Cr.P.C. One of those circumstances is, where a criminal proceeding appears to be manifestly attended with malafide or is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the High Court can exercise inherent powers to quash the F.I.R. or the proceeding. Having taken note of the facts and circumstances as depicted from the papers on record, this Court finds the complaint case instituted at the instance of the opposite party no.2 to be coming under the said circumstance. That apart, the order of cognizance

also suffers from lack of requisite sanction under Section 197 of Cr.P.C. Hence, this Court is inclined to quash the impugned orders as well as the proceeding of the said case for the interest of justice.

8. In the result, the CRLMC is allowed, and the impugned orders as well as the proceeding in I.C.C. No.23 of 1992 pending in the court of the S.D.J.M., Nabarangpur stand quashed.

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

(S.Pujahari)
Judge

MRS