

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1651 of 2011

Premananda Bohidar

....

Petitioner

Mr. B.K. Ragada, Advocate

-Versus-

Chaka Nayan Biswal and another

....

Opposite Parties

Mr. P.K. Mohanty, Advocate

Mr. D. Nayak. Advocate

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

06.05.2022

Order
No.

05.

1. Heard learned counsel for the petitioner and learned Additional Standing Counsel for the State. None appears for O.P. No.1.

2. Instant application under Section 482 Cr.P.C. is filed by the petitioner seeking an order to set aside impugned order dated 25th April, 2011 passed in C.T. Case No.2073 of 2011 by the learned S.D.J.M., Jharsuguda for having taken cognizance of offences under Sections 294, 323, 342, 448 and 506 IPC on the grounds stated therein.

3. Mr. Ragada, learned counsel for the petitioner submits that the petitioner was on duty and O.P.No.1 in connection with the case had been forwarded to the court but later on, after his release filed a false complaint making allegation that he was assaulted while being in custody. It is further submitted that such allegation was made as a counterblast after O.P.No.1 was arrested by him. It is also submitted that the learned court below did not take cognizance of the fact that the petitioner was on duty by then and if at all any

excess was committed, sanction was required in terms of Section 197 Cr.P.C.

4. On the other hand, Mr. Mohanty, learned Additional Standing Counsel justified the order of cognizance which is under challenge.

5. In fact, the learned court below recorded the initial statement of O.P.No.1 and after conducting enquiry in terms of Section 202 Cr.P.C. passed the impugned order under Annexure-1. Against the order of cognizance dated 25th April, 2011, the petitioner approached this Court for quashing of the proceeding by invoking the Court's inherent jurisdiction.

6. Taking into account assertions made in the complaint and materials furnished before the learned court below, it has been prima facie show that O.P.No.1 was ill-treated. Mr. Ragada, learned counsel for the petitioner contended that there was no sanction obtained as required under Section 197 Cr.P.C. before taking cognizance. That apart, it is submitted that the allegation to be outrightly false. While contending so, Mr. Ragada cited a decision of the Apex Court in the case of *State of Haryana and others Vrs. Ch. Bhajan Lal and others 1990 SCR Supp.(3) 259*. It is contended that there is no case made out considering the complaint at its face value. However, the Court finds that on a bare reading of the complaint and other materials, a prima facie case to have been made out against petitioner which requires enquiry and the question of sanction is a matter to be taken cognizance of and properly dealt with during trial.

7. In other words, on the aspect of sanction under Section 197 Cr.P.C., the petitioner shall have the liberty to raise it during the trial by referring to all such materials to show that he was on duty at

the relevant point and if at all any excess was committed by him, he did have the immunity from being criminally prosecuted.

8. In view of the above, the Court finds no reason to interfere with proceeding which is pending before the learned court below in C.T. Case No.2073 of 2011.

9. In the result, CRLMC stands dismissed.

(R.K. Pattanaik)
Judge

