

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3385 of 2010

Sambit Kumar

....

Petitioner

Mr. B.B.Swain, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. P.K.Mohanty, ASC

CORAM:

JUSTICE R.K.PATTANAIAK

DATE OF JUDGMENT: 07.04.2022

R.K. Pattanaik, J

1. Instant application under Section 482 Cr.P.C. is filed by the petitioner challenging the legality of the impugned order of cognizance dated 6th September, 2010 (Annexure-2) passed in G.R. Case No.495 of 2010 by the learned S.D.J.M., Bargarh on the grounds *inter alia* that there is no evidence on record to sustain any charge against him that apart no sanction was obtained in term of Section 197 of Cr.P.C. besides the fact that there is no material to even remotely suggest any kind of his involvement vis-à-vis the alleged incident.

2. In fact, a plain paper F.I.R. was drawn by the IIC, Town P.S. Bargarh on receiving reliable information regarding disposal of a stolen Travera vehicle and in that connection, P.S. Case No. 175 (4) dated 5th July, 2010 was registered under Section(s) 379,411 & 414 read with 34 IPC which corresponds to G.R.Case No.495 of 2010. Thereafter, investigation was held and finally, charge sheet was submitted against the principal accused and others including the petitioner for having assisted in the disposal of said vehicle bearing

registration No. OR-26-A 0726 consequent upon which the learned court below took cognizance of the alleged offences against all under Annexure-2.

3. Heard Mr. B.B.Swain, learned counsel for the petitioner and Mr. P.K.Mohanty, learned ASC appearing for the State.

4. It is contended by Mr. Swain that the evidence on record does not in any way show and establish the involvement of the petitioner, who was in-charge of the RTO office at the relevant point of time. It is further contended that none of the offences for which the learned court below has taken cognizance of can be directed against the petitioner as he was neither involved in the theft of the vehicle nor to be responsible in assisting its disposal with the knowledge that it to be stolen property. Apart from above, according to Mr. Swain the learned court below could not have taken cognizance of the offences vis-à-vis the petitioner in absence of any sanction obtained as is required under Section 197 Cr.P.C. Furthermore, it is urged that even accepting the evidence on record at its face value, it would not suggest or prove involvement of the petitioner in the commission of the alleged crime and therefore, the impugned order under Annexure-2 deserves to be quashed as against him.

5. Mr. Mohanty, on the other hand, contends that evidence collected during investigation prima facie established the involvement of the petitioner who at that point of time was an official of the RTO office and as was alleged to be responsible for ensuring disposal of the stolen vehicle and therefore, the learned court below did not commit any error and rightly passed the impugned order of cognizance vide Annexure-2 which therefore, calls for no interference.

6. The Court perused the charge sheet and other material evidence including the case diary which has been made available by Mr. Mohanty, learned ASC.

7. Admittedly, IIC, Town P.S. Bargarh on receiving information about the vehicle in question drew a plain paper F.I.R. and thereafter, on registration of the case directed an S.I. of Police to conduct the investigation. In course of investigation, the I.O. recorded the statement of the witnesses under Section 161 Cr.P.C. It is also made to appear that some incriminating materials were seized by the I.O. from the office of the RTO, Bargarh. There is no denial to the fact that in course of investigation, the I.O. confirmed about the theft of the alleged vehicle and its use by the principal accused bearing a temporary registration No. CG 07 TR 9237 which was subsequently registered as OR 26 A 0746. According to the I.O. the relevant documents, such as, sale certificate, Form No. 22 and sale invoice in the name of Vardhaman Motors found to be forged. In so far as the petitioner's role is concerned, he was in temporary charge of the RTO and as per the I.O., since the stolen vehicle was registered at a time when he was holding the office and disposal was made of the stolen property, a conclusion was drawn about the connivance and accordingly, he was also charge sheeted.

8. At this juncture, Mr. Swain contends that how the petitioner could be alleged of having committed the offences of theft besides retention and disposal of the stolen vehicle, when he was discharging his official function at the time of its registration. It is contended that there is no material to show that the petitioner was having any knowledge about the vehicle to be a stolen one and what he did while registering the same was discharging his official duty without any collusion with other accused persons, who may be said

to have committed the offences. In this regard, a decision of this Court in the case of **Pranab Kumar Pradhan Vrs. State of Orissa** reported in **2013(II) OLR 126** is placed on reliance by Mr. Swain contending that even considering the entirety of the evidence, no case could be said to have been made out against the petitioner. More or less in a similar facts and circumstances, this Court in the case (supra) had the occasion to examine the legality of the order of cognizance and ultimately held that it should be quashed or else would amount to abuse of process of the Court. On a perusal of the case diary and material evidence, the Court does not find any direct or indirect material to suggest the involvement of the petitioner even in the disposal of the stolen vehicle for the purpose of an offence committed and punishable under Section 414 IPC much less for other offences under Sections 379 and 411 read with 34 IPC which are primarily against other accused persons. Being conscious of the settled position of law with regard to exercise of inherent jurisdiction and also limitations, the Court is of the considered view that under certain circumstances when there is total deficiency in evidence, order of cognizance may be quashed without which it would amount to miscarriage of justice referring to which this Court in **Pranab Kumar Pradhan** case (supra) exercised the power and interfered with the cognizance order. Applying the above ratio to the case in hand, the Court arrives at a logical conclusion that there is no specific material worthy of consideration to prima facie establish any such direct or indirect involvement of the petitioner in the alleged crime except an allegation with no legs to stand. Rather, the Court finds that the petitioner while discharging his official duty permitted the registration after initial verification made by the officials of the RTO and on receiving their endorsements.

9. That apart, Mr. Swain referred to a decision of the Supreme Court in **Abdul Wahab Ansari Vrs. State of Bihar and Another** reported in (2000) 8 SCC 500, wherein, it was held and observed that any overt act alleged by discharging official duty would require sanction under Section 197 Cr.P.C. and a plea in that respect can be raised at any stage of the proceeding. It is settled law that even when some excess is committed by a Government official while discharging his duty, under such circumstances, sanction would be necessary in terms of Section 197 Cr.P.C. In the present case, admittedly, no such sanction has been obtained and placed before the learned court below. Any ways, as already discussed, the Court finds that material to be conspicuously absent in order to show any such involvement of the petitioner and his connivance with other accused persons in order to ensure registration of the stolen vehicle unlawfully. Having said that, the Court finally holds that the cognizance order under Annexure-2 with respect to the petitioner cannot be sustained.

10. Accordingly, it is ordered.

11. In the result, application under Section 482 Cr.P.C. stands allowed. As a consequence, the order of cognizance dated 6th September, 2010 under Annexure-2 passed in G.R. Case No.495 of 2010 by the learned S.D.J.M., Bargarh is hereby set aside vis-a-vis the petitioner.

(R.K.Pattanaik)
Judge