

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.743 of 2010

Jitendra Nath Pattnaik @ Jitu Pattnaik Petitioner
Mr. U. Ch. Pattnaik, Advocate

-Versus-

State of Odisha Opposite Party
Mr. Sk. Zafarulla, ASC

CORAM:
JUSTICE R.K. PATTANAIK

ORDER

13.05.2022

Order No.

10. 1. The petitioner by invoking inherent jurisdiction under Section 482 Cr.P.C. has challenged the proceeding in G.R. Case No.155 of 2003 pending in the file of S.D.J.M. Champua for having taken cognizance of the offences under Section(s) 143, 120(B), 109, 341, 506 and 149 IPC by order dated 3rd February, 2006 (Annexure-2) on the ground that the same is bad in law and therefore, liable to be set aside.
2. It is claimed that the petitioner by the time of lodging of the FIR was the Chairman of Joda Municipality and had called a bandh while demanding repair of the road in that area which had damaged due to transport of minerals through vehicles from Joda to Barbil and in that connection, an all party meeting had been called by the local administration. As revealed from the FIR, despite an instruction not to take law into own hands, on 28th October, 2003, supporters of the petitioner alleged to have obstructed vehicles on NH-215 by using force and threatened the truck drivers with dire consequences. On such a report being lodged by the informant, Champua P.S. Case No.91 was registered and finally, charge sheet was filed on 20th February, 2004 and thereafter, by the impugned order under Annexue-2, cognizance of the offences was taken. According to the petitioner, the allegations in the FIR

and the registration of the case is politically motivated and besides that, no prima facie case is made out as against him and therefore, the proceeding in G.R. Case No.155 of 2003 should be quashed to that extent.

3. Heard Mr. U.C. Pattnaik, learned counsel appearing for the petitioner and Mr. Sk. Zafrullah, learned ASC for the State.

4. Mr. Pattnaik while appearing for the petitioner contends that the learned court below exceeded in its jurisdiction by directing the local police to file the charge sheet as for taking of cognizance, the period of limitation was stated to expire which is revealed from the first order dated 3rd February, 2006. As it appears from the record, on the very same day, the above direction was complied and on receipt of charge sheet, impugned order under Annexure-2 was passed. It is further contended that the petitioner had a right to protest but a false case was registered on the allegation of conspiracy. It is claimed that the proceeding has been initiated without any basis and being politically motivated and furthermore, as no prima facie case is made out vis-à-vis the petitioner, the criminal proceeding in G.R. Case No.155 of 2003 should be set at naught.

5. On the other hand, Mr. Sk. Zafrullah would contend that the petitioner was responsible for the alleged incident which is revealed from the FIR. It is also contended that the petitioner was the conspirator and abettor since the alleged overt acts were committed by his political supporters whose names have been mentioned in the FIR. As further contended, for the mischief committed during the alleged incident, as the petitioner was responsible for calling the bandh and being the conspirator, rightly, therefore, the local police roped him in the case as well and hence, the proceeding pending before the concerned court is maintainable.

6. Considering the FIR, it is made to understand that a bandh had been called on 20th October, 2003 and during that time, the named supporters of the petitioner had indulged in the alleged mischief by stopping vehicles and threatening the drivers with dire consequences, if they do not cooperate. Admittedly, the petitioner was not present at the spot. As claimed by the learned counsel for the petitioner Mr. Pattnaik, some persons were holding flag of a political party and they were obstructing the vehicles on the road and on that basis, the case was registered. It is also claimed that by taking into account the materials collected during investigation, even if accepted at its face value, no case is prima facie made out against the petitioner. Mr. Pattnaik furthermore cited a decision of the Supreme Court in the case of **Amit Sahni Vrs. Commissioner of Police and others** reported in AIR 2020 SC 4704 by contending that it was a constitutional right to hold protest but the local police registered a false case against him despite the fact that he was not even physically present at the spot. As to the decision (supra), the Apex Court held that demonstrations expressing dissent is a right guaranteed under Article 19 of the Constitution of India, 1950. However, it does not mean that a protest should be observed by undemocratic means. In the case at hand, since the mischief was committed by illegally obstructing the vehicles plying on the road and threatening the drivers, the same cannot be defended on the ground that protest is a constitutional right guaranteed under the Constitution.

7. As regards the jurisdiction exercised by the learned court below, Mr. Pattnaik cited a decision of the Apex Court in **R. Sarala Vrs. T.S. Velu and others** reported in 2000(II) OLR (SC) 90. In the aforesaid case, the Supreme Court held and observed that a Court cannot direct the I.O. to take opinion of the Public Prosecutor before filing of charge sheet, since prosecution and investigation are to different aspects of administration of criminal justice. From the

order dated 3rd February, 2006, it appears that the learned court below directed that OIC of the P.S. to comply Section 170(1) Cr.P.C. as by then charge sheet had not been received and the limitation was about to lapse for the purpose of taking cognizance. However, as it appears from the impugned order under Annexure-2, the charge sheet dated 20th February, 2004 was produced before the court below, whereupon, the cognizance order was passed. It seems that the investigation was over long back in the year, 2004 but the charge sheet had not been filed before the court below. In any case, the court below appears to have directed the local P.S. to ensure filing of the charge sheet before expiry of the limitation prescribed in Section 468 Cr.P.C. which in the considered view of the Court was unnecessary and uncalled for. It was for the local police to file the charge sheet or to place it before the court in time and in the instant case, it could have been ensured, if the investigation was really over in 2004 itself. Nevertheless, the court below had no business to direct the OIC of the P.S. to file the charge sheet on the ground that the limitation would expire on 20th October, 2006.

8. Even by considering the allegations in the FIR, the Court finds that it was against some supporters of the petitioner which was claimed by the local police. It is admitted that the petitioner was not present at the spot, when the alleged overt acts were committed. According to the Court, simply to allege that the mischief so perpetrated was at the instance of the petitioner would not be proper. If some supporters commit mischief during the protest, the person leading the movement without any direct involvement being shown cannot be straightway held responsible with the allegation that he seems either to be the abettor or conspirator. Even by accepting the entirety of the allegations, in the considered view of the Court, still no prima facie case appears to have been made out as against the petitioner. In fact, for some acts

of vandalism by the supporters that by itself cannot be ground to initiate a criminal action against the petitioner merely for the reason that he was the leader. Under the above circumstances and for the reasons assigned, the Court is of the opinion that the criminal proceeding against the petitioner should not be allowed continue and accordingly, it is ordered.

9. In the result, the application under Section 482 Cr.P.C. stands allowed. As a corollary, the impugned order under Annexure-2 is set aside to the extent indicated and consequently, the criminal proceeding in G.R. Case No.155 of 2003 pending before the court of S.D.J.M., Champua is hereby quashed vis-à-vis the petitioner.

TUDU

