

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2646 of 2012

Nilamadhab Mohanty.

....

Petitioner

-versus-

State of Odisha & another.

....

Opposite Parties

CORAM: JUSTICE S.PUJAHARI

ORDER
25.04.2022

Order No.

04.

1. This matter is taken up through Hybrid mode.
2. The petitioner in this application under Section 482 of the Code of Criminal Procedure (for short “Cr.P.C.”) has prayed for quashing of the order dated 29.08.2012 passed by the learned S.D.J.M., Jajpur in I.C.C. Case No.265 of 2011 taking cognizance of the offences under Sections 294/506 IPC and Section 3 of the SC & ST (PA) Act against him.
3. Heard the learned counsel for the petitioner and the learned counsel for the State. None appears for the opposite party no.2.
4. As it appears, the opposite party no.2-complainant had been to the office of the present accused petitioner to ventilate his grievance that due to shortage of staff the education of the

students are suffering. But however the accused petitioner though stated to have extended threat to him and taking the name of his caste abused him in filthy languages and as such the complaint was filed. After recording the initial statement as well as the statement under Section 202 Cr.P.C. the court has taken cognizance of the offences.

5. It is the case of the petitioner that neither the offence under Sections 3 of the S.C. & S.T (PA) Act nor the offence under Section 506 IPC was made out as the aforesaid allegation appears to have been made being actuated with malice. Furthermore, the aforesaid having inextricably connected in discharge of official duty, the court could not have taken cognizance in absence of the sanction under Section 197 Cr.P.C.

6. It is true that during discharge of official duty, a person was not supposed to commit the offence but when any offence is complained of which has inextricable connection with discharge of official duty or to save the public servant from undue harassment on false and frivolous allegation, permission under Section 197 Cr.P.C. is required. Admittedly, the Petitioner is a public servant. The aforesaid allegations having reasonable connection in due discharge of the official duty, the court could not have proceeded without sanction of the Government inasmuch as Section 197 Cr.P.C. mandates as thus;

“197. Prosecution of Judges and public servants-

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any

offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction”

7. So also the apex Court in the case of **Matajog Dobey vrs. H.C. Bhari** reported in **AIR 1956 SC 44** have held as follows:

“In *Shreekantiah Ramayya Munipalli v. The State of Bombay*(1), Bose, J. observes as follows: "Now it is obvious that if section 197 of the Code of Criminal Procedure is construed too narrowly, it can never be applied, for of course, it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning". The question of previous sanction also arose in *Amrik Singh v. The State of PEPSU*(6). A fairly lengthy discussion of the authorities is followed up with this summary: "If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under section 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required".

8. Considering the facts and the submissions made, so also the law laid down as above, this Court is of the view that the offence alleged to have been committed having close nexus with due discharge of official duty and also committed during the course of the official duty, the court could not have taken cognizance of the offence alleged and proceeded against the Petitioner in the absence of the sanction under Section 197 Cr.P.C. Considering the aforesaid, this Court allows the Criminal Misc. Case in exercise of the power under Section 482

Cr.P.C. and consequently quashes the criminal prosecution initiated against the Petitioner vide ICC No.265 of 2011 pending in the court of learned S.D.J.M., Jajpur. The court concerned shall do the needful to close the proceeding in view of the aforesaid order, on receipt of the certified copy of this order

9. With the aforesaid order, this Criminal Misc. Case stands disposed of.

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

MRS/PKS

