

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3789 of 2012

Bijayalaxmi Ghosh and another *Petitioners*
versus-
State of Orissa and another *Opposite Parties*

CORAM: JUSTICE S. PUJAHARI

Order
No.

ORDER
25.04.2022

04. 1. This matter is taken up through hybrid mode.
2. Mr. Sarada Prasad Dash, learned counsel enter appearance on behalf of the Petitioners by filing the Vakalatname in Court today after obtaining no objection from the previous counsel. The same be kept on record.
3. This application under Section 482 of Cr.P.C. has been filed by the Petitioners with a prayer to quash the order dated 3rd July, 2012 passed by the learned S.D.J.M., Bhubaneswar in 1.C.C. No.597 of 2012, taking cognizance of the offences under Sections 294, 323, 506 read with Section 34 of the I.P.C.
4. Heard the learned counsel for the Petitioners and the learned counsel for the State-Opposite Party No.1. No one appears on behalf of the Opposite Party No.2-Complainant in spite of sufficiency of notice.

5. The Petitioners have sought for quashment of the order of cognizance on the ground that civil dispute being pending between the parties, the aforesaid complaint made against Petitioners is concocted one. Therefore, the learned Magistrate should not have taken cognizance in the aforesaid case for the offences against the Petitioners.

6. In the case of ***Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., reported in (2000) 3 SCC 269***, the Apex Court have held as follows:-

“Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgement of first information report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the court on a perusal of the complaint comes to a conclusion that the allegations leveled in the complaint or charge-sheet on the face of it do not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law. To exercise powers under Section 482 of the Code, the complaint in its entirety will have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear ex facie on the complaint. The truth or falsity of the allegations would not be gone into by the Court at this earliest stage. Whether or not the allegations in the complaint were true is to be decided on the basis of the evidence led at the trial.”

7. It is only in cases when the allegations in the complaint do not make out any case against the accused nor do they disclose the ingredients of an offence alleged against the accused or the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion that there is sufficient ground for proceeding against the accused, the power under Section 482 Cr.P.C. has to be exercised to quash the prosecution, is also the view in the case of *Medchl Chemicals & Pharma (P) Ltd.* (supra). Besides the same, if any statutory bar is there to proceed against the accused persons, the Court shall also not proceed against them.

8. Since prima facie materials are available on record against the Petitioners and the case of the Petitioners is not covered by any of the circumstances as indicated in paragraph-7, this Court is not inclined to interfere with the order of taking cognizance by exercising the jurisdiction under Section 482 of Cr.P.C.

9. Therefore, this petition filed is devoid of merit and, as such, the same stands dismissed.

10. But, if the Petitioners raise the contentions as aforesaid at the time of framing of charge, as it is a complaint case triable by warrant procedure, the trial court shall examine the evidence adduced before the charge and other materials available on record and also hearing the parties, pass necessary order under Section 244 or 245 of Cr.P.C. as deem fit and proper without being influenced by this order in any manner.

(S. Pujahari)
Judge