

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.160 of 2018

***Debadatta Parija @ Papu &
another***

....

Petitioners

-versus-

State of Odisha

....

Opposite Party

CORAM: JUSTICE S.PUJAHARI

ORDER

16.08.2022

**Order
No.**

12.

1. This matter is taken up by Hybrid mode.
2. This application under Section 482 Cr.P.C. has been filed by the Petitioners for quashment of the order of cognizance dated 11.10.2017 passed by the learned S.D.J.M, Jagatsinghpur in G.R. Case No.1165 of 2015 wherein the learned S.D.J.M has taken cognizance of the offence under Sections 147/ 148/ 348/ 353/ 323/ 333/ 294/ 506/ 436/ 307/ 149 IPC and proceeded against the Petitioners.
3. It is the case of the Petitioners that they have been falsely implicated in the aforesaid case as they had made a protest for inheritance of the Math property and Mahantship by one Biswajit Das illegally. Furthermore, they having not been specifically named to have played any overt act even though they were present near the spot and protesting the illegalities committed by Biswajit Das, they could not have been proceeded with in this case by the court concerned. Hence, a

case having been falsely foisted against them, cognizance and the proceeding against them need to be quashed.

4. On the other hand, learned counsel for the State submits that the Petitioners were the members of the unlawful assembly and in the guise of making protest they attacked the Endowment Inspector, who was present there and had been to the spot to make an inquiry into the grievance of the public in due discharge of his official duty. However, Biswajit Das could escape from the spot. Hence, even though no specific overt act has been played against the present Petitioners but they being members of an unlawful assembly, in view of the mandate of Section 149 IPC they do not have a case for quashment.

5. It appears from the materials available on record, the Petitioners were there near the spot as stated by some of the witnesses. No doubt, they were there to make a protest for inheritance of Mahantship by Biswajit Das and the Math property on the strength of deceased Mahanta as their grievance to the Endowment Commissioner in this regard was not addressed properly. But when the Endowment Commissioner sent the Endowment Inspector to enquire into the matter, thereafter they formed an unlawful assembly and played overt act including the attack to the Endowment Inspector. From the materials available on record, it appears that the Petitioners were present there. Section 149 IPC makes every member of unlawful assembly guilty of offence committed in prosecution of common object by any member of the assembly if he had the knowledge of such an offence is likely to be committed.

Whether the Petitioners had the knowledge of such offence to be committed by unlawful assembly is a question of fact and subject to proof. Therefore, at this stage it cannot be said that the Petitioners have been prosecuted falsely in this case inasmuch as detailed appreciation of the materials on record is impermissible. Accordingly, there being prima facie materials of indictment of the commission of the aforesaid offences and also the Petitioners to have been members of the unlawful assembly, the prayer made by the Petitioners to quash the cognizance on the ground stated is devoid of merit.

6. Accordingly, this CRLMC stands dismissed.

7. However, the Petitioners being a part of the Math and the case is of the year 2015, even though N.B.W (A) has been issued against them, if the Petitioners surrender before the court in seisin over the matter and move for bail within four weeks' hence, the court in seisin over the matter shall allow them to go on bail on such terms and conditions as it may deem just and proper. If the Petitioners do not surrender within the time stipulated, there is no impediment to execute the N.B.W.(A) issued against the Petitioners thereafter.

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

(S. Pujahari)
Judge

PKS