

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.869 of 2012

Dhusu @ Dhusa Das & Another

....

Petitioners

Mr. B.K.Ragada, Advocate

-Versus-

State of Odisha and another

....

Opposite Parties

Mr. P.K.Mohanty, ASC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

20.05.2022

Order No.

06.

1. Heard learned counsel for the petitioners and the learned counsel for the State.
2. This is an application under Section 482 of Cr.P.C. filed by the petitioners challenging an order of cognizance dated 26th December, 2011 passed in G.R. Case No. 2554 of 2011 arising out of Kharvelanagar P.S. Case No. 172 (10) of 2011 registered under Section 302 IPC pending in the file of learned SDJM, Bhubaneswar on the ground that there is no prima facie case against them to the offence of murder as well as under Section 212 IPC.
3. Initially, after the F.I.R. was lodged under Section 302 IPC, a case was registered in which the principal accused, namely, Kabu Behera was arrested and thereafter, the petitioners on the allegation that both harboured the former, who allegedly committed murder of the victim, whose body was noticed by the complainant. In fact, initially the petitioners were arrested only under Section 214 IPC and

thereafter, forwarded to the court but later on, charge sheet was filed against them including the principal accused under Sections 302/394/397/212/34 IPC, whereupon, the learned court below took cognizance and passed the impugned order dated 26th December, 2011.

4. Mr. Ragada, learned counsel appearing for the petitioners submits that there is even no prima facie case under Section 212 IPC so to say leave alone an offence under Section 302 IPC which has been alleged against the accused persons, inasmuch as, the involvement in the alleged murder is shown against the principal accused, namely, Kabu Behera, whom both stated to have harboured after the alleged incident, considering which, the order of cognizance dated 26th December, 2011 should be quashed.

5. Mr. Mohanty, learned Additional Standing Counsel contends that the allegation is with regard to murder of the victim whose unidentified body was found, later to which, the report was lodged by the complainant and it ultimately revealed the involvement of the accused, namely, Kabu Behera. It is fairly conceded by Mr. Mohanty that there is no specific allegation or any material to show that the petitioners have had a role in the commission of crime, such as, the murder of the victim.

6. Mr. Ragada submits that the principal accused, rather, confessed to have committed the crime of having killed the victim and as such, there is no role played by the petitioners except allegation is regarding harbouring the principal accused. From the record, it is revealed that the petitioners were forwarded to the court under Section 214/34 IPC and the offence since bailable in nature, both were released on bail by order dated 9th September, 2011. However, the petitioners were roped in subsequently at the time of filing of charge

sheet with the allegation that all the accused persons to be involved in the alleged incident. But, the Court does not find any material showing the complicity of the petitioners as to the murder of the victim which is alleged to have been committed by the principal accused, namely, Kabu Behera, who was initially forwarded to the court for the said offence and subsequently charge sheeted. Rather, the primary allegation is to the effect that the petitioners subsequent to the incident either harboured or assisted in the concealing of the principal accused, namely, Kabu Behera, who alleged to be the main assailant or perpetrator of the crime and therefore, offence under Section 212 read with section 34 IPC can only be said to have been made out against them.

7. Having regard to the submissions of the learned counsel for the respective parties, the Court is of the considered view that, the petitioners ought not to have been charge sheeted under Section 302 IPC and rather their involvement prima facie appears to be confined to the harbouring of the principal accused.

8. In the result, application under Section 482 Cr.P.C. stands allowed to the extent indicated. Consequently, the impugned order dated 26th December, 2011 passed in G.R. Case No. 2554 of 2011 by the learned court below is hereby quashed for the offences under Section 302 IPC as well as Section(s) 397/394/34 IPC vis-à-vis the petitioners without disturbing it in respect of offence under Section 212 read with Section 34 IPC for which both have to face the trial.

9. Accordingly, the CRLMC stands disposed of.

(R.K. Pattanaik)
Judge