

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 3969 of 2012

Abdul Rasid @ Babula and Others

....

Petitioners

Mr. N.B.Dora, Advocate

-Versus-

Abdul Khalid

....

Opposite Parties

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
22.07.2022

Order No.

- 07.
1. Heard learned counsel for the petitioners. None appears for the opposite party.
 2. This application under Section 482 of Cr.P.C. is filed by the petitioners challenging the impugned order of cognizance dated 12th July, 2012 passed in I.C.C. No.92 of 2012 by learned SDJM, Jagatsinghpur on the ground that no prima facie case is made out for an offence under Section 379 IPC, all the more when, there is no proper description of materials alleged to have been stolen at their instance as has been claimed by the opposite party-complainant.
 3. Learned counsel for the petitioners submits that the learned court below should have passed an order under Section 156(3) Cr.P.C. directing registration of a case instead proceeded with the complaint and notwithstanding the fact that no specific description as to material

stolen indicated in the complaint, took cognizance of the offence under section 379 read with 34 IPC, which is bad in law and liable to be quashed. By contending so, learned counsel for the petitioners produced a certified copy of the statement of the complainant recorded under Section 200 Cr.P.C. in I.C.C. Case No. 92 of 2012 to suggest that details of the articles found missing not to have been mentioned and that apart, it also runs contrary to the claim that some purchase items kept had been stolen or disposed of by the petitioners.

4. The Court is of the view that for non-description of the materials or for any such contradiction as has been pointed out by the learned counsel for the petitioners to the effect that either some fabrication materials were disposed of or items purchased being kept at unit said to have been illegally sold cannot be a ground for this Court to quash the proceeding by exercising inherent jurisdiction Section 482 Cr.P.C. which is in fact factually based and lies within the domain of the trial. The Court is also not inclined to accept the contention that the learned court below should have passed an order under Section 156(3) Cr.P.C. for registration of a police case for the fact that there is no bar as such to proceed with a complaint. In any case, the learned court below exercise its jurisdiction in complaint case by holding an enquiry in terms of Section 202 Cr.P.C. before taking cognizance of offence and issuing process against the accused. Further, the Court is of the view that no roving enquiry can be undertaken at this point of time which is based on facts to decide whether a case is made out or not against the petitioners for offence under Section 379 IPC. The truthfulness or otherwise of the allegations which is being alleged by the learned counsel for the petitioners can only be examined and decided by the court during trial. In any event, the petitioners shall have the opportunity to raise all such grounds at the time of framing of charge.

5. Accordingly, it is ordered.
6. In the result, the CRLMC stands dismissed.

(R.K. Pattanaik)
Judge

kabita

