

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMC No. 1453 of 2014

Pradipta Kumar Biswasray and Others** **Petitioners
Mr. S.S. Mohanty, Advocate
-versus-
State of Odisha and Others** ... **Opposite Parties
Mr. Ishwar Mohanty, Addl. Standing Counsel

CORAM:
THE CHIEF JUSTICE

Order No. **ORDER**
15.07.2022

07. 1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr PC) has been filed seeking the quashing of an order dated 9th October, 2013 passed by the Sub-Division Judicial Magistrate, Bhubaneswar (SDJM, Bhubaneswar) in ICC No.5973 of 2013 and the FIR vide Khandagiri P.S. Case No.591(9) dated 4th December, 2013 corresponding to C.T. Case No.4718 of 2013.
2. While directing notice to issue on 4th April, 2014 this Court directed that no coercive action shall be taken against the Petitioners in the above case.
3. This Court has heard the submissions of Mr. S.S. Mohanty, learned counsel for the Petitioners and Mr. Ishwar Mohanty, learned Additional Standing Counsel for the State (Opposite Party).
4. Despite Opposite Party No.2 having been served and a lawyer having entered appearance on his behalf earlier, today despite a pass over none appears for Opposite Party No.2.

5. The background facts are that the complainant sold various plots of lands to the Petitioner Nos.2 to 4 and proforma Opposite Parties Nos.4 to 8 and 12 through registered sale deed (RSD) between 1982 and 1984 for consideration and also delivered possession of the plots. The said plots were then mutated in the names of the parties between 1990 and 1998. They are stated to be paying taxes and cess thereon regularly to the competent authorities.

6. On 24th January, 2011 Petitioner No.3 sold one of the plots to M/s. Builders Consortium, a partnership firm of which Petitioner No.1 Pradipta Kumar Biswasray is the partner. Possession of the plot was also delivered to it.

7. In 2011 the Petitioner No.1 Pradipta Kumar Biswasray acting on behalf of M/s. Builders Consortium entered into a separate agreement with Petitioner Nos.2 and 4 for developing the land. For this purpose the land in question was delivered to Petitioner No.1. Likewise, Petitioner No.1 acting on behalf of M/s. Builders Consortium entered into independent agreements with persons who purchased the plots from Opposite Party Nos.4, 5, 6, and 7. Construction is stated to have been started by Petitioner No.1 after necessary permissions.

8. The complainant i.e. Opposite Party No.2 herein initiated proceedings against the Petitioners and Opposite Party Nos.4 to 8 under Section 144 (2) Cr PC in Criminal Misc. Case No.1420 of 2009. Prior thereto, the Opposite Parties also filed complaint cases being ICC Nos.4443/2009, 4444/2009 and 4450/2009. After enquiry, the proceedings under Section 144 Cr PC were dropped by the police authorities on the ground that the disputes between

the complainant and the present Petitioners were of civil nature. Some of the persons who sold their plots to the Petitioner No.1 approached the Civil Court by filing suits against Opposite Party No.2, the complainant in 2009 itself praying for damages and permanent injunction.

9. On 10th May, 2011 the complainant filed C.S. No.867 of 2011 before the Civil Judge (Sr. Division), Bhubaneswar for a declaration of title, confirmation of possession, certification of the sale deed and gift deeds against Petitioner Nos.1, 2 and Opposite Party No.8. The said defendants have filed their written statements in the said suit which is stated to be subjudice.

10. Separately, C.S. No.867 of 2011 was filed by Opposite Party No.2 complainant against Urmila Pattnaik and others for declaration of title, confirmation and possession, cancellation of sale deed and gift deeds etc. and seeking permanent injunction against Petitioner No.1 and Opposite Party No.5. The complainant also filed C.S. No.907 of 2011 in the same court for similar relief vis-à-vis certain other Petitioners.

11. On 24th December, 2011 the Petitioners filed an FIR in Khandagiri Police Station, which was registered as Khandagiri P.S. Case No.445 of 2011 stating that a group of miscreants headed by Abid Alli, who is the complainant's son and one journalist namely Alok Ranjan Patro forcibly entered the suit land, damaged the boundary wall and threatened the labourers and contractors working at the site.

12. In Khandagiri P.S. Case No.445 of 2011 the son of Opposite Party No.2 complainant obtained bail in BLAPL No.3058 of 2012 in this Court by order dated 29th February, 2012. As far as the above P.S. Case No.445 of 2011 corresponding to G.R. Case No.3811 of 2011 in the Court of the S.D.J.M., Bhubaneswar is concerned, the said magistrate took cognizance for the offence under Sections 447, 427, 294, 506 and 34 IPC by an order dated 16th December, 2013.

13. It is in the above background that Opposite Party No.2 i.e. complainant filed ICC No.5973 of 2013 in the Court of the S.D.J.M., Bhubaneswar. By an order dated 9th October, 2013 the said Court directed the IIC, Khandagiri Police Station to register the complaint petition for investigation under Section 156(3) Cr PC. Consequently, the case was registered as Khandagiri PS Case No.591(9) of 2013 corresponding to C.T. Case No.4718 of 2013.

14. Opposite Party No.2 is stated to have sold the suit land to Lotus Residency Pvt. Ltd. It is submitted by the Petitioners that even assuming the sale to Lotus Residency Pvt. Ltd. as on 5th October, 2013, Opposite Party No.2 did not have any right, title and interest or any possession over the suit land.

15. Mr. S.S. Mohanty, learned counsel for the Petitioners points out how the story in the FIR is completely unbelievable and suppresses material particulars mentioned hereinbefore. It proceeds on the basis that the complainant i.e. Opposite Party No.2 who was in possession of the suit property went to the spot at 11 am he saw progress of construction and found the accused persons

at the spot. When questioned they threatened him with dire consequences.

16. Claiming that the complainant did not place the complete and true facts before the Court, it is submitted that an FIR could be quashed if it is mala fide. ICC No.5973 of 2013 corresponding to C.T. Case No.4718 of 2013 initiated by the Opposite Party No.2 is asked to be quashed as it grossly suppresses material facts of the pendency of the aforementioned civil suits between the parties and the fact that the Opposite Party No.2 complainant had resold the property before filing the complaint case. It is accordingly prayed that this Court quashed the entire proceedings in ICC No.5973 of 2013 apart from setting aside the order dated 9th October, 2013 passed by the SDJM, Bhubaneswar.

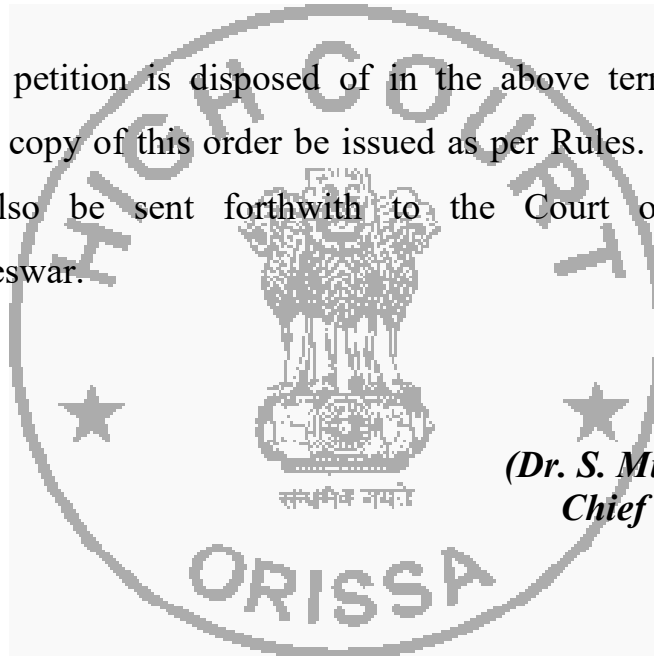
17. The above submissions have been considered. Indeed, the narration in the FIR at the instance of Opposite Party No.2 does not acknowledge the previous history of litigation involving these parties. It is clearly an instance of suppression of material facts in the FIR. The very narration of the FIR that for first time in 2013 the complainant came across the Petitioners is belied by the fact that there has been litigation involving the parties since 2009. The narration of the FIR itself appears totally improbable and stands contradicted by other proceedings pending between the parties. The Court is satisfied that the FIR is not bona fide registered by Opposite Party No.2.

18. This is a typical case of suppression of material facts by the complainant Opposite Party No.2 Petitioners which by itself should result in quashing of the criminal complaint at the instance

of Opposite Party No.2. Further the said criminal proceedings are an abuse of the process of the Court as they appear to have been instituted as a counter-blast to the civil litigation against Opposite Party No.2.

19. For all the aforesaid mentioned reasons, this Court allows the prayer made in this petition and quashes the proceedings in ICC No.5973 of 2013 corresponding to C.T. Case No.4718 of 2013 and the order dated 9th October, 2013 passed by the SDJM, Bhubaneswar.

20. The petition is disposed of in the above terms. An urgent certified copy of this order be issued as per Rules. A copy of this order also be sent forthwith to the Court of the SDJM, Bhubaneswar.



(Dr. S. Muralidhar)
Chief Justice

S.K. Jena/Secy.