

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2821 of 2011

Sarada Prasanna Panda

....

Petitioner

Mr. Manoj Bihari Das, Advocate

*-Versus-*

State of Odisha & Another

....

Opposite Parties

Mr. Sk. Zafarulla, ASC

Mr. P.K. Dhal, Advocate for O.P.No.2

**CORAM:**

**JUSTICE R.K. PATTANAIK**

**ORDER**

**13.05.2022**

Order No.

10.

1. Instant petition under Section 482 Cr.P.C. is filed by the petitioner questioning the correctness of the order of cognizance dated 6<sup>th</sup> August, 2010 vide Annexure-3 passed in G.R. Case No. 9 of 2003 on the grounds inter alia that it is bad in law and furthermore, the criminal proceeding is liable to be quashed as against him for absence of any material showing his involvement in so far as the alleged transaction is concerned which is claimed by the complainant to have been accomplished by perpetrating fraud.

2. Heard Mr. M.B. Das, learned counsel appearing for the petitioner and Mr. Sk. Zafarulla, learned ASC for the State besides Mr. P.K. Dhal, learned counsel for O.P.No.2.

3. Mr. Das appearing for the petitioner contends that the order of cognizance under Annexure-3 is liable to be quashed since because the entire of the allegation is against the other accused persons claiming that they are alleged of having committed fraud while selling the property in question. It is further contended that the petitioner being one of the purchasers was not involved in the act of fraud which is directed against the sisters of O.P. No.2 and therefore, the learned court below fell into serious error, while taking cognizance of the offences against him.

4. Mr. Sk. Zafrulla, on the other hand, contends that the cognizance order under Annexure-3 is absolutely justified since the allegation in the complaint is not only against the siblings of the complaint but also includes the petitioner, who was very much present at the time of transaction in dispute. It is further contended that considering the facts of the complaint, since prima facie case is made out against the petitioner, the order of cognizance dated 6<sup>th</sup> August, 2010 cannot be held as untenable. Mr. Dhal for O.P. No.2 adopted the argument advanced by the State and contended that there is allegation of connivance against the petitioner in the complaint and therefore the criminal proceeding against him cannot be quashed.

5. Mr. Das contends that the statement under Section 161 Cr.P.C. of O.P. No.2 does not suggest any kind of involvement of the petitioner with regard to the transaction in question. It is further contended that the petitioner being one of the purchasers cannot be implicated in the case which was filed on account of a dispute between the sisters over sharing of the property.

6. The proceeding against another accused, namely, Bhabani Charan Rath has been quashed by this Court's order dated 8<sup>th</sup> April, 2020 in CRLMC No. 3343 of 2010 referring to which it is contended by Mr. Sk. Zafrulla that the said accused was absent when the sale deed in question was executed, whereas, the allegation against the petitioner is one of direct connivance.

7. The complaint is filed by O.P.No.2 alleging that the property was disposed of by playing fraud and impersonation denying her a share therein which was perpetuated by the accused persons including the petitioner being very much present at the time of execution of the sale deed. After the complaint was filed, the court below directed investigation under Section 156(3) Cr.P.C. which finally led to the submission of the charge sheet against all

the accused persons, whereupon, the order of cognizance under Section(s) 419/420/468/469/471120-B IPC was passed.

8. On a bare perusal of the complaint, it is made to appear that at the time of alleged transaction, the petitioner's presence is claimed. It is clearly mentioned in the complaint that accused Nos.1, 3 & 7, namely, the petitioner managed to obtain the sale deed executed by employing fraud and impersonation. As further revealed from the complaint, the other accused, namely, Sarada Prasanna Panda, who is also a purchaser like the petitioner is not alleged of any direct participation in the execution of the sale deed in question. Considering the said fact, the criminal proceeding in G.R. Case No. 9 of 2008 was quashed as against accused No.7 in CRLMC No. 3343 of 2010. The statement of the complainant recorded under Section 161 Cr.P.C. cannot be sole basis to quash the proceeding against the petitioner. Rather, the complaint and the allegations contained therein makes out a prima facie case against the petitioner since he is claimed to be present at the time of execution of the sale deed and played a part in connivance with other accused persons. The truthfulness or otherwise of the allegations vis-à-vis the petitioner is a matter that lies within the realm of the trial which would be adjudicated upon by the court below. But for the present, the facts alleged in the complaint are sufficient to maintain the proceeding against the petitioner. In such view of the matter, the Court is not inclined to quash the proceeding against the petitioner as has been prayed for.

9. Accordingly, it is ordered.

10. In the result, the petition stands dismissed.

**(R.K. Pattanaik)**  
Judge