

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2997 of 2011

Sanatan Das and others

....

Petitioners

-versus-

***Pradipta @ Amulya Kumar Patra
and another***

....

Opposite Parties

CORAM: JUSTICE S. PUJAHARI

ORDER

21.03.2022

Order

No.

06.

1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioners with a prayer to quash the order dated 5th August, 2011 passed by the learned J.M.F.C., Chandbali in 1.C.C. No.58 of 2011.
3. Heard the learned counsel for the Petitioners and the learned counsel for the State.
4. The Petitioners in this case has challenged the order of cognizance as well as the proceeding initiated against them.
5. As it appears, regarding the self-same cause of action, a police case vide Bansada P.S. Case No.195 of 2010 was registered where only Surendra Das (husband of the deceased) has been arrested and after submission of charge sheet, the learned Magistrate took cognizance of the offence under

Section 302 of the I.P.C. against Surendra Das and the case was committed to the court of sessions and while the case was pending before the learned Additional Sessions Judge, Fast Track Court No.I, Bhadrak. Thereafter, the aforesaid complaint was filed against the in-laws of the deceased including Surendra Das, inasmuch as, as some offences are left out while filing charge sheet and the police has not arrested and charge sheeted all of them. However, the court, after taking the initial statement of the witnesses and the inquiry under Section 202 of Cr.P.C. decided to proceed against all the accused persons taking cognizance of all of the offences.

6. In all fairness of the things, both the cases should have been tagged together and tried as police case in view of the mandate of Section 210 of Cr.P.C. However, since the matter was stayed by this Court, the case of the husband of the deceased was committed to the court of sessions and ultimately he was tried under Section 302 of I.P.C. and convicted. The Petitioner, therefore, has challenged the cognizance and the proceeding initiated against them on the ground that since there are many procedural irregularity, the cognizance and the proceeding against them is liable to be quashed. Furthermore, the husband of the deceased having already been convicted under Section 302 of I.P.C., the proceeding against the Petitioners is misconceived.

7. I am not inclined to accept the aforesaid submission in view of the law laid down in the case of **Bhagwant Singh v. Commissioner of Police and another, reported in AIR 1985 SC 1285**. The procedural irregularity though appears to have been committed, but the same is no ground for quashment of the cognizance and proceeding.

8. Accordingly, the prayer made for quashment of the cognizance and proceeding in this Criminal Misc. Case is dismissed.

9. However, the Petitioners are at liberty to raise all the contentions as available to them at the time of framing of charge and in that event, the Court shall sift the materials available on record to the extent permissible in law taking note of the submission to come to a conclusion regarding the fact whether sufficient grounds are there to presume that they have committed the offence or not to decide whether to frame charge against them, without being influenced by this order in any manner.

10. But while dismissing the petition, liberty is given to the Petitioners to surrender before the Court in seisin over the matter and moves for bail and in that event, the Court in sessions over the matter shall consider and dispose of the same in accordance with law during the first hour. In case of rejection of the bail application, the Petitioners may move for bail before next higher forum in the second hour. Needless to

say that since the Petitioners have been indicted in a case on the basis of complaint and the Petitioners have been protected by this Court since long, the Court in seisin over the matter while considering the prayer for bail of the Petitioners shall take note of all these facts and considered their prayer for bail in course of the day sympathetically.

11. N.B.W., if any issued against the Petitioners, shall remain stayed for a period of six weeks hence or their date of surrendering, whichever is earlier, in order to enable them to avail of the benefit of the aforesaid order.

(S. Pujahari)
Judge

DA

