

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3568 of 2013

Jasmita Priyadarsini.

....

Petitioner

-versus-

State of Odisha & another.

....

Opposite Parties

CORAM: JUSTICE S.PUJAHARI

ORDER

21.06.2022

Order No.

04.

1. This matter is taken up through Hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the petitioner to quash the entire criminal prosecution in G.R. Case No.331 of 2013, arising out of Udala P.S. Case No.102 of 2013, pending in the Court of the learned S.D.J.M., Udala.
3. Heard the learned counsel for the petitioner and the learned counsel for the State. None appears for the opposite party no.2-Informant.
4. As it appears, a complaint petition vide 1.C.C. No.68 of 2013 was filed against the petitioner alleging that she furnishing false information got a residential certificate as a resident of Udala, inasmuch as in the application form she did not disclose her marital status though she had already married

then and pursuant to the same, she having got a service, she committed offence under Sections 420 and 177 of IPC. The said complaint was sent to the police under Section 156(3) of Cr.P.C., the police registered the case and investigated into the matter and on completion of the investigation the police filed report that the case is non-cognizable under Section 177 of IPC and basing on the same, the Court took cognizance.

5. Learned counsel for the petitioner submits that since the application form prescribing the Rules does not disclose the name of the husband, but only to indicate the father's name, the petitioner indicated her status as the daughter of her father and not the name of her husband. Otherwise also, after her marriage, the petitioner resided in the same town and it being never the case that she is not a resident of Udala Town, the prosecution launched against her being actuated without substance and outcome of malice, is liable to be quashed.

6. Learned counsel for the State, however, submits that the petitioner had not disclosed the fact of her marital status, the charge-sheet submitted against her under Section 177 of I.P.C. for not furnishing such information, which she was legally bound to do, the prosecution launched against her should not be quashed on the grounds stated.

7. However, the petitioner has come to challenge the said P.R. though on merit of the case, but this Court thinks it proper with regard to competence of the police to file such P.R. in a non-cognizance case. Needless to say that Section 177 of IPC is a non-cognizable one and cognizance of the same can only be

taken on a complaint of a person as indicated in Section 155(4) of Cr.P.C. No doubt, when a report discloses commission of a cognizable offence along with some non-cognizable offences the police is authorized under Section 155(4) of Cr.P.C. to investigate both the cases. But, during such investigation, if no cognizable case is made out, then the police has to furnish a prosecution report only with the permission of the Court. Hence, the police can investigate a non-cognizable case and furnish a P.R., but with permission of the Court. Besides the same, if such non-cognizable offence prescribes that only a complaint is entertainable at the instance of certain person, even on a P.R. submitted while investigating a cognizable offence along with such non-cognizable offence, as commission of a non-cognizable offence is made out, the Court is incompetent to proceed with the matter, inasmuch as the same cannot be treated as a complaint much less when the said complaint was not initiated at the instance of the person indicated in Section 195 of Cr.P.C. Therefore, the complaint which was sent under Section 156(3) of Cr.P.C. to investigate, even for a moment, that was pursuant to a direction of the Court, as such, police was competent to file the P.R. on disclosure of the non-cognizable offence under Section 177 of IPC, but the complaint being not at the instance of the person indicated in Section 195 of Cr.P.C., such report is not entertainable by the Court. As such, the criminal proceeding initiated on such P.R. is incompetent one.

8. I would, therefore, allow this Criminal Misc. Case and quash the aforesaid prosecution launched against the petitioner. The trial court shall do well to comply with this order on production of the certified copy of this order.

9. Urgent certified copy of this order be granted on proper application.

(S. Pujahari)
Judge

MRS

