

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3763 of 2010

Naresh Kumar Jena & another. Petitioners

Mr. Krushna Chandra Das, Advocate

-versus-

State of Odisha & another. Opposite Parties

Addl. Standing Counsel – For O.P. No.1-State

M/s. Nilakantha Das, L.N. Palit,

Advocates – For O.P. No.2

**CORAM:
JUSTICE S. PUJAHARI**

**ORDER
23.08.2022**

**Order
No.**

11. **1.** This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) seeking for quashing of the order dated 07.04.2008 passed by the learned S.D.J.M., Jajpur in G.R. Case No.1167 of 2006 taking cognizance of the offence under Section 294/34 of IPC against the petitioners.

2. Heard the learned counsel for the petitioners and the learned counsel appearing for the State-Opposite party no.1. None appeared on behalf of the opposite party no.2 to participate in the hearing.

3. As it appears, prior to institution of the aforesaid complaint by the opposite party no.2, the mother of the present petitioners had filed a complaint which on being referred to police by the learned S.D.J.M., Jajpur, was registered as Jajpur P.S. Case No.93 of 2006 corresponding to G.R. Case No.253 of 2006 under Sections 294, 323, 506/34 of IPC read with Section 3 of the S.C. & S.T. (PoA) Act against Prakash Mishra, son of the opposite party no.2 (Informant in G.R. Case No.1167 of 2006) and others. It is alleged that in the aftermath of registration of the said case, there arose a village rivalry and some upper caste people, especially the persons made accused in the aforesaid G.R. case instituted at the instance of the mother of the petitioners, out of grudge foisted false cases including

the present G.R. case and one complaint case bearing I.C.C. No.373 of 2006 registered under Sections 341, 323, 294, 506, 379/34 of IPC against the present petitioners. The said complaint case ended in acquittal as per the order dated 09.08.2010 of the learned J.M.F.C., Jajpur. The present case, i.e., G.R. Case No.1167 of 2006 has been registered pursuant to the F.I.R. lodged by the opposite party no.2, vide which it is alleged that the cattle of the petitioners damaged her paddy crops, and when protested, the petitioners went to her house, abused her filthy and outraged her modesty etc. The police, however, on completion of investigation, submitted charge-sheet under Section 294/34 of IPC only against the petitioners and the learned S.D.J.M. has taken cognizance of the said offence issuing process against them. The said order is under challenge.

4. It is the submission of the learned counsel appearing for the petitioners that the entire allegation made by the opposite party no.2 vide the F.I.R. being frivolous in nature, no charge-sheet ought to have been

filed by the police, especially when the allegations under Sections 452, 354 and 506 of IPC have been found to be false during the investigation. It is his further contention that since the prosecution is manifestly tainted with personal grudge and long standing enmity, the learned S.D.J.M. ought not to have taken cognizance of the offence under Section 294/34 of IPC which is also not prima-facie made out from the papers on record.

5. On the other hand, the learned counsel appearing for the State submits that the impugned order having been passed on the basis of the materials collected by the I.O. during the investigation, no interference is called for by this Court.

6. The alleged incident dates back to 06.10.2006 while both the sides were running rivalry in the village by filing case and counter case against each other. As it further appears, at the instance of the mother of the present petitioners, there was a case against the son of the opposite party no.2 for the offence under Section 3

of the S.C. & S.T. (PoA) Act besides other offences under the Indian Penal Code, and thereafter there were some counter cases at the instance of the accused persons in the aforesaid case or their relatives against the present petitioners. Although various allegations were made by the opposite party no.2 vide her F.I.R. prompting the police to register the case under Sections 452, 294, 354 and 506/34 of IPC, the only offence under Section 294/34 of IPC was said to have been made out during the investigation, and accordingly, on the basis of the charge-sheet filed by the police for the said lone offence, the impugned order was passed by the learned S.D.J.M. against the petitioners. Needless to mention that there is no protest from the side of the Informant (opposite party no.2) against the aforesaid charge-sheet of police, vide which the major offences were reported to be not made out. Compared to the accusation brought under the major offences vide the F.I.R., the offence under Section 294 of IPC that was taken cognizance of, speaks against the veracity of the allegations made by the Informant-opposite party no.2. Having gone through the

materials on record, it can be said that the prosecution so launched by the opposite party no.2 was an outcome of the long standing dispute and persisting grudge.

7. In the case of ***State of Haryana vrs. Bhajan Lal***, reported in 1992 Supp.(1) SCC 335 their Lordships of the Apex Court have been pleased to illustrate the circumstances under which this Court can interfere with a criminal proceeding at its threshold, by invoking the power under Section 482 of Cr.P.C. One of those circumstances is, where a criminal proceeding appears to be manifestly attended with malafide or is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the High Court can exercise inherent powers to quash the F.I.R. or the proceeding. Having taken note of the facts and circumstances as depicted from the papers on record, this Court finds the complaint case instituted at the instance of the opposite party no.2 to be coming under the said circumstance. Hence, the impugned order of

cognizance as well as the proceeding of the said case needs to be quashed for the interest of justice.

8. In the result, the CRLMC is allowed, and the impugned order of cognizance as well as the proceeding in G.R. Case No.1167 of 2006 pending in the court of the learned S.D.J.M., Jajpur stands quashed qua the petitioners.

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

(S.Pujahari)
Judge

MRS

