

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.4384 of 2011

Bichitra Kumar Giri & another. ***Petitioners***

-versus-

State of Orissa & another. ***Opposite Parties***

CORAM: JUSTICE S.PUJAHARI

ORDER
18.04.2022

Order No.

04.

1. This matter is taken up through Hybrid mode.
2. The petitioners, in this application under Section 482 of the Code of Criminal Procedure (for short “Cr.P.C.”), have prayed for quashing of the order dated 28.03.2011 passed by the learned S.D.J.M., Rairangpur in C.T. No.283(A) of 2011 (arising out of I.C.C. No.82 of 2010) taking cognizance of the offences under Sections 323 and 447/34 of IPC.
3. Heard the learned counsel for the parties.
4. Mr. D.P. Dhal, learned senior counsel appearing for the petitioners would submit that in this case since the complaint filed by opposite party no.2 was sent under Section 156(3) of Cr.P.C. and the police, after registration of the case, filed a final report against the person accused of, thereafter on a protest petition the Court could not have taken cognizance without

paying due regard to the statement of the witnesses recorded during the investigation of the police wherein they have not implicated the petitioner in any manner, even though they have come forward to depose against the petitioners in Court in the complaint case. Besides the same, there being civil litigation between the parties, the Court also taking note of the same come to a conclusion that the aforesaid allegation is nothing but has been raised being actuated with malice and, as such, continuance of the prosecution against the petitioners would be an abuse of the process of the Court, hence the same is liable to be quashed.

5. However, the learned counsel appearing for the opposite party no.2 would submit that in view of the law laid down by the apex Court in the case of ***Bhagwant Singh v. Commissioner of Police and another***, reported in AIR 1985 SC 1285 that when police files a final report on investigation made, thereafter the informant is not debarred of making protest on the same, which is required to be registered as a complaint case. As such, on inquiry if the court finds that materials have come out indicating commission of offence, the court has to take cognizance of offence and also proceed against the perpetrators of the crime if there are sufficient materials to indict them in the case. Therefore, the court, as such is not bound by the report of the police investigation.

6. Needless to say that it was in this case the complaint though was filed but it was sent under section 156(3) and thereafter it was registered as a police case and investigation was made. Police when filed final report, the informant, being aggrieved by the same, filed a complaint, inasmuch as the law authorized him to do so, as otherwise a perpetrator of the crime would go unpunished when police wantonly or bonafidely failed to investigate a case properly or left the accused persons who had committed the crime. Since in this case on the complaint filed and on going through the initial statement as well as on 202 enquiry the court held that there was a prima facie case that the petitioners to be the perpetrators of the crime, the contention raised by learned senior counsel appearing for the petitioner is devoid of substance inasmuch as, it is not the appropriate stage to quash the prosecution to appreciate the fact that due to civil litigation, the case was filed. The same is more so as at this stage the court is not supposed to appreciate the materials on record or veracity of the version, but to have look into the materials and take a prima facie view. Therefore, the petitioners' prayer in this case is liable to be dismissed, submits learned counsel for the opposite party no.2.

7. No doubt opposite party no.2 had filed a complaint against the petitioners which was sent by the court under section 156(3) to the police for registration, pursuant to which a case was registered and ultimately on conclusion of the investigation final report was filed. Even if in such cases, when

the case was initiated on a complaint after it was sent under section 156(3), it can no more be stated to be a complaint case, but a case registered by the police and report submitted thereon is one under section 173, Cr.P.C. When report is submitted under section 173 Cr.P.C., is final report, informant has a right to make protest, as held by the apex Court in the case of ***Bhagwant Singh*** (supra). Since such a complaint was filed alleging the police to have not investigated the case properly, if the complaint as well as initial statement discloses a cognizable offence, the court has to take cognizance and thereafter proceed, if so required, against the persons committing the crime or conduct inquiry under section 202 Cr.P.C. to ascertain/satisfy itself about the persons alleged to have committed the crime for proceeding against them. In this case, the court, by following the said procedure, having taken the cognizance, therefore, as the police case was earlier initiated under section 156(3), on a protest, when a final report was filed therein, the court could not have taken cognizance on a protest petition basing on the evidence adduced, as submitted by the learned senior counsel appearing for the petitioners, appears to be misconceived one. Furthermore, the other submissions that since the statements of the witnesses in the police record does not implicate the petitioners, but, thereafter in the complaint case though they have deposed against them, the court should have been slow in proceeding against them, appears to be without substance, as the complaint was filed on protest disputing the investigation to be fair. The scheme of the Code

(Cr.P.C.) provides such a mechanism to have a check and balance on the statutory power of the police to investigate a case fairly, otherwise the police report would be final even if the investigation was not done properly either for wantonly or bonafidely. Hence, in this case, the impugned order on the ground stated as such cannot be found fault with.

8. Now coming to the case that it has been actuated with malice inasmuch as there was civil dispute between the parties, this Court, at this stage, cannot on that ground quash the prosecution, especially when the materials on record disclose the commission of the offence, for which cognizance has been taken and the involvement of the petitioners, as that would tantamount to the appreciation of the evidence, which is neither in the domain of the trial court nor in the domain of this Court under section 482 Cr.P.C. to quash the order of cognizance. It is only when a case is inherently improbable or there are some materials of sterling value placed in court, this court can quash the prosecution, even if the same does not form part of the record before the Magistrate and the materials therein disclose a prima facie case. Besides, when in spite of a statutory bar to proceed against the accused persons the court has taken cognizance and proceeded, the same can also be quashed under section 482 Cr.P.C.. Since the case of the petitioner is not coming within any of such category, the impugned order cannot be found fault with.

9. Accordingly, the CRLMC, being devoid of merit, stands dismissed.

(S. Pujahari)
Judge

