

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.378 of 2012

Rajakishore Paikaray

....

Petitioner

-versus-

State of Orissa and another

....

Opposite Parties

CORAM: JUSTICE S. PUJAHARI

ORDER

18.04.2022

Order

No.

05.

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 with a prayer to quash the order of cognizance dated 8th August, 2007 passed by the learned S.D.J.M., Puri in I.C.C. No.81 of 2000 as well as the issuance of process against him.
3. Heard the learned counsel for the Petitioner and the learned counsel for the State-Opposite Party No.1. No one appears on behalf of the Opposite Party No.2.
4. From the prosecution allegation, it reveals that on 30th May, 2000, when the complainant was sleeping in his residence with his family members in their respective rooms, suddenly the breaking open sound of the front door of the house was heard. The wife of the complainant who was sleeping in the front room of the house raised

hue and cry. Hearing her hue and cry, the complainant and other inmates rushed towards the front door and found that the accused persons in police uniform have entered the house and their house was raided by the police and her wife and inmates were misbehaved and manhandled by the police and the complainant and his family members were taken to custody and forwarded to the court and after their release from custody, complaint case was lodged by the complainant alleging offence under Sections 354, 323, 324, 325, 326, 294, 109, 377 read with Section 34 of the I.P.C. to have been committed by the police personnel and the Petitioner in this case wherein an initial statement was recorded and cognizance has been taken under Section 294, 323, 354 read with Section 34 of the I.P.C. against the Petitioner and issued process against him.

5. Learned counsel for the Petitioner submits that though the complaint was filed in the year 2000, but the cognizance has been taken in the year 2007. The same is barred by limitation in view of the provision contained under Section 468 of Cr.P.C. that offence punishable for three years, cognizance has to be taken within said time but cognizance was taken beyond the peril of limitation, i.e., after seven years of filing the complaint. Another contention also advanced since prima facie it emerges from the materials available on record that the complainant while being taken to custody in connection with a

case, the aforesaid excess was committed by the police and the same having a reasonable connection in discharge of his official duty in the absence of the sanction, the court could not have been proceeded with the same. In such premises, he submits to quash the prosecution launched against the Petitioner.

6. Considering the facts and submissions made, this Court is not inclined to accept the contention that the cognizance has been taken on the complaint filed after the period of limitation, as in the case of ***Japani Sahoo v. Chandra Sekhar Mohanty, reported in AIR 2007 SC 2762***, the Apex Court at Paragraph-53 have held as follows:-

“53. In view of the above, we hold that for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a Court. We, therefore, overrule all decisions in which it has been held that the crucial date for computing the period of limitation is taking of cognizance by the Magistrate/Court and not of filing of complaint or initiation of criminal proceeding.”

7. Coming to the second contention that without sanction of the appropriate warrant under Section 197 of Cr.P.C., the court could not have proceeded with the same, as all of them are police personnel including the present Petitioner and while he investigating into the matter stated to have committed the excess. In the case of ***Matajog***

Dobey v. H.C. Bhari, reported in 1956 AIR 44, the Apex Court have held as follows:-

“ In Shreekantiah Ramayya Munipalli v. The State of Bombay(1), Bose, J. observes as follows: "Now it is obvious that if section 197 of the Code of Criminal Procedure is construed too narrowly, it can never be applied, for of course, it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning". The question of previous sanction also arose in Amrik Singh v. The State of PEPSU(6). A fairly lengthy discussion of the authorities is followed up with this summary: "If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under section 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required."

8. On consideration of the facts and submission and in view of the law laid down in the case of *Matajog Dobey* (supra), this Court is of the view that the trial court could not have taken cognizance in absence of sanction under Section 197 of Cr.P.C. against the Petitioner

9. I would, therefore, allow this Criminal Misc. Case and quash the impugned order of cognizance as well as the entire criminal prosecution launched qua the Petitioner. The trial court shall do well to comply with this order on production of the certified copy of this order.

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

(S. Pujahari)
Judge

DA

