

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1789 of 2016

Bibhasini Nanda & others *Petitioners*
versus-
State of Odisha and another *Opposite Parties*

CORAM: JUSTICE S. PUJAHARI

ORDER
27.06.2022

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 Petitioners with a prayer to quash the order of cognizance dated 25.04.2016 passed by the learned J.M.F.C., Narasinghpur in ICC No.32 of 2016 taking cognizance under Sections 448/294/323/354/506 IPC and Section 3 of the S.C. & ST Act against them.
3. Heard learned counsel for the Petitioners.
4. It appears that Opposite Party No.2 filed ICC No.21 of 2014 before the learned J.M.F.C., Narasinghpur. The trial court had sent the matter to the concerned Police Station under Section 156 (3) Cr.P.C. for investigation. Thereafter, P.S. Case No.70 of 2014 was registered. After completion of the investigation, the Police filed the final report before the trial court. Learned trial court issued notice to the Opposite

Party No.2 for filing objection. Thereafter, learned J.M.F.C. placed the matter before the Lok Adalat. In the Lok Adalat, the Opposite Party No.2 filed a protest petition against the final report submitted by the I.O. The court below directed to file a fresh complaint petition in a proper form vide order dated 12.12.2015. Pursuant to the said order, the Opposite Party No.2 filed ICC No.32 of 2016. Thereafter, learned J.M.F.C. has taken cognizance of the aforesaid offences vide order dated 25.04.2016.

5. After completion of the investigation when the Police placed a final report before the learned J.M.F.C, learned J.M.F.C. placed the same in the Lok Adalat for acceptance of the final report. No doubt by then learned J.M.F.C had no jurisdiction as in the meanwhile the Special Court under the S.C. & S.T (PA) Act was vested with the jurisdiction of the original court. However, learned J.M.F.C instead of sending the matter to the Special Court placed the matter in the Lok Adalat wherein the Complainant appeared and expressed to file a protest petition. Thereafter, she was directed to file appropriate petition. Pursuant to the same, appropriate petition having been filed, learned J.M.F.C in compliance to the procedure, took cognizance of the aforesaid offences vide order dated 25.04.2016.

6. Learned counsel appearing for the Petitioners submits that the learned J.M.F.C being incompetent to entertain the case, the cognizance taken is liable to be quashed.

7. There is no reproach that the learned J.M.F.C. took cognizance of the offence he was bereft of jurisdiction inasmuch as by the time the amendment was already in force. The amendment envisages that it is a Special Court competent to take cognizance of the offence without the case being committed to it. However, the case having been registered before the learned J.M.F.C and the Police having filed a final report so also complainant having noticed to have her response on such final report, when she filed a complaint the court took cognizance and proceeded against the Petitioners in oblivious to the said amendment. Since in this case the court has committed the mistake by entertaining the complaint, the Complainant cannot be allowed to suffer for such mistake of the court. In such cases, the doctrine *actus curiae neminem gravabit* (an act of court shall prejudice none) would be applied.

8. Accordingly, this Court while allowing this Criminal Misc. Case and setting aside the order of cognizance and the proceeding against the Petitioners pending in the court of learned J.M.F.C., Narasinghpur, directs the learned J.M.F.C to submit the final report along with case diary in G.R. Case

in question to the Special Court, Cuttack, who in turn on receipt of the same take the same to its file and pass necessary order as required under law giving notice to the Complainant to have her response on such final report. Learned J.M.F.C. shall proceed in the matter forthwith to comply the order. Registry shall communicate this order to the learned J.M.F.C., Narasinghpur immediately.

9. With the aforesaid order, this CRLMC stands disposed of being allowed.

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

(S. Pujahari)
Judge

PKS

