

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.266 of 2019

Hemanta Kumar Mishra and others *Petitioners*
versus-
State of Odisha and another *Opposite Parties*

CORAM: JUSTICE S. PUJAHARI

Order
No.
05.

ORDER
03.03.2022

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 taking cognizance dated 3rd August, 2018 passed by the learned Special Court (SC/ST), Balasore in I.C.C. Case/Special Case No.56 of 2017, corresponding to Special Cae No.123 of 2017, arising out of Balasore Sadar P.S. Case No.68 of 2017.
3. Heard the learned counsel for the parties.
4. The grievance of the Petitioners in this case is that though the case at the instance of the Opposite Party No.2-Complainant lodged before the police was duly investigated and charge sheet was not filed against some of the accused persons and also omitting offence under Section Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, but on a protest petition made by the Opposite Party No.2-Complainant, the Court having taken cognizance of the offence and also proceeded against other co-accused persons, the same is liable to be quashed, inasmuch the aforesaid complaint is based on no facts and contrary to the investigation made.

5. Learned counsel for the Petitioner advancing his contention as aforesaid, submits to quash the order of cognizance as well as the proceeding against the Petitioner.

6. Learned counsel for the Opposite Party No.2-Complainant, however, submits that since police did not investigate the case properly and omitted the offence under Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and file charge sheet leaving some of the accused persons, so also deleted certain offence, the Opposite Party No.2-Complainant have right to protest and, as such, protest petition was filed which was treated complaint. The learned Special Judge when taking note of the contents of the petition as well as the statement recorded under Sections 200 and 202 of Cr.P.C. which prima facie make out the offence under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and also the other offences against all the accused persons, has passed the impugned order, the same needs no interference. Hence, the Criminal Misc. Case filed is devoid of merit and the same is liable to be dismissed.

7. Needless to say that scheme of the Code is that when F.I.R. is lodged against certain persons alleging certain offences and ultimately if the police did not find any case against any of the accused persons or did not find any offence alleged submits the final form, then as per the law laid down in the case of **Bhagwant Singh v. Commissioner of Police and another, reported in AIR 1985 SC 1285**, the police is duty bound to give such an intimation to the Informant or if not, the Court before acceptance such report is required to give a notice to the Informant in this regard and after consideration the protest petition, if any material is produced, pass a necessary order in this regard. Such a power has been given to the Magistrate not to allow any offence go unpunished, if the police, either wantonly or through bona fide error

failed to submit a report after investigation regarding commission of an offence or involvement of some perpetrator of the crime or in other words, as a check and balance to the statutory power of the police to investigate a case independently.

8. In this case some of the accused persons have not been charge sheeted and also some of the offence stated to have been deleted as alleged by the Opposite Party No.2-Complainant and the Opposite Party No.2-Complainant having made a protest in shape of complaint, she was examined under Section 200 of Cr.P.C. and also an inquiry under Section 202 of Cr.P.C. was made. Then left out accused persons having been proceeded with as well as cognizance under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act has been taken by the court concerned. Challenge to the said order in this case on the ground that since police on investigation having not found and also any case under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act as well as the persons, who are not charge sheeted, without any substance. Therefore, the petition is devoid of merit.

9. In such premises, the CRMC stands dismissed.

(S. Pujahari)
Judge

DA