

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.354 of 2012

Nirakar Mohapatra and another* *Petitioners

-versus-

State 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 Petitioners with a prayer to quash the order of cognizance dated 21st December, 2011 passed by the learned S.D.J.M., Udala in I.C.C. No.25 of 2011 (C.T. No.728/11) and the order dated 18th January, 2012 passed by the learned S.D.J.M., Udala in I.C.C. No.25 of 2011 (CT No.728/11) wherein N.B.W.(A) has been issued against the Petitioner No.1.
3. It appears that notice was issued to the Opposite Party No.2-Complainant by registered post with A.D., but the A.D. having not been returned, the notice be treated as sufficient in view of Section 27 of the General Clauses Act.
4. Heard the learned counsel for the Petitioners and the learned counsel for the State-Opposite Party No.1.

5. From the prosecution allegation, it reveals that Opposite Party No.2-Complainant was arrested by Kaptipada Police on the false report made by the Petitioner No.1 which is registered as Kaptipada P.S. Case No.47 of 2011 for the offence under Sections 294 and 506 of I.P.C. and forwarded to the court and also remanded to custody. After his release on bail, he filed the aforesaid complaint petition indicating therein that he has been assaulted while he was abused by the Petitioner No.2 and on the instigation of the Petitioner No.1, police officer in the aforesaid P.S. Case abused and criminally intimidated him.

6. As it appears, no such complaint was made before the learned Magistrate while the Petitioners were produced in connection with the said case and there is reasonable connection on the part of the Petitioner No.2 in discharge of his official duty that while he was investigating a case taken the Opposite Party No.2-Complainant to custody and incident stated to have been occurred. Therefore, in such circumstances, the Court should not have taken cognizance and proceeded without any order of sanction against the Petitioner No.2. Otherwise also this Court in the attending facts circumstances is of the view that the complaint stated to have been made after release on bail, being actuated with malice and, as such, allowing the prosecution against the Petitioner No.1 would be an abuse of the process of the court. When the prosecution against the Petitioner No.2 fails for the said reason and the prosecution against the Petitioner No.1 has to fail also

inasmuch as it is stated that at the instance of the Petitioner No.1, the offence stated to have been committed by the Petitioner No.2 and he was also abused by Petitioner No.1 in the police station.

7. I would, therefore, allow this Criminal Misc. Case and quash the impugned orders as well as the entire criminal prosecution launched against the Petitioners vide I.C.C. No.25 of 2011 (CT No.728/11) on the file of the learned S.D.J.M., Udala. The trial court shall do well to comply with this order on production of the certified copy of this order.

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

(S. Pujahari)
Judge

DA