

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.4447 of 2011

Shivaratan Bothra

....

Petitioner

Mr.S.Swain, Advocate

-Versus-

State of Odisha & another

....

Opposite Parties

Mr.P.K.Mohanty,ASC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

20.05.2022

Order No.

- 23.
1. Heard learned counsel for the petitioner and learned counsel for the State.
 2. This is an application under Section 482 of Cr.P.C. filed by the petitioner challenging the order of cognizance dated 25th February, 2011 and consequential order of issuing NBW dated 30th March, 2011 in G.R. Case No. 532 of 2007 pending in the file of learned J.M.F.C., Rajgangpur, Sundargarh on the grounds mentioned therein.
 3. It is contended by the learned counsel for the petitioner that on 16th January, 2008, some police personal from Odisha visited Delhi and informed him with regard to the lodging of F.I.R. dated 11th December, 2007 wherein cheating was alleged by the informant, namely, Dinamani Barik, who received calls through an Airtel SIM mobile phone No. 9810592346 claiming that a British diplomat would arrive in India and for the alleged purpose, he was advised to deposit 750 dollars in the name of Airport charges, so as to receive the prize

award, consequent upon which, he deposited Rs. 9,94,738/- on different dates in five different ICICI Bank accounts at Jharsuguda.

4. It appears from the F.I.R. dated 11th December, 2007 that after having received such calls, the complainant deposited the amount in the alleged accounts, but he found himself cheated. After the F.I.R. was lodged by the informant, Bargaon P.S. Case No. 114 of 2007 was registered under Section(s) 417/420 IPC and thereafter, investigation was commenced, during which, as submitted by the learned counsel for the petitioner, the accused was interrogated and at last, charge sheet was filed against him and others, whereupon, the learned court below took cognizance of offences under Section(s) 417/420 read with 34 IPC by order dated 30th March, 2011 which is under challenge.

5. Learned counsel for the petitioner submits that the petitioner has read up to Class-V having no knowledge in reading and writing in English and a small time businessmen dealing with different kinds of zip chains having a shop at Azad Market, New Delhi and he is having a personal mobile which is being used for the purpose of carrying out business activities. It is further submitted that there is absolutely no material on record so as to show any kind of his involvement in the alleged cheating. It is submitted that rather it suggests that a personal document of the petitioner to have been fraudulently procured, while he had applied for a SIM and thereafter, it seems that some miscreants misutilising the same managed to get a SIM and using it called the complainant and illegally collected Rs.9,94,738/-. It is contended that the money which was collected was deposited in accounts of other persons and not the petitioner. Lastly, it is contended that having no materials on record, prima facie, no case is made out against the

petitioner therefore, the order of cognizance and consequential orders are not sustainable and therefore, deserve to be quashed.

6. Mr. Mohanty, learned Additional Standing Counsel, on the other hand, submits that there is a case made out since because the SIM stands in the name of the petitioner which was ascertained during the investigation and hence, the charge sheet was filed against him and other accused persons. However, Mr. Mohanty fairly conceded that except such material with regard to utilization of SIM lying the name of the petitioner, no evidence surfaced to suggest that any amount which was illegally received from the complainant or deposited or diverted from any other account to that of the petitioner's having been revealed during the police investigation.

7. Having regard to the above facts, nature of evidence on record and considering the submissions of the learned counsel for the petitioner as well as the State, the Court is of the considered view that there is no prima facie case made out against the petitioner for having committed offences under Section(s) 417/420/34 IPC.

8. In fact, the settled position of law as has been propounded by the Supreme Court in case of State of Haryana and others Vrs. Ch. Bhajan Lal and others reported in AIR 1992 SC 604 is that considering the F.I.R. and other materials if no prima facie case is made out, jurisdiction in terms of Section 482 Cr.P.C may be exercised to interfere with the criminal proceeding. The Court being alive and conscious of the law laid down and taking into account the nature of allegation and absence of any material to show any direct or indirect involvement of the petitioner, the Court is of the opinion that the criminal proceeding in G.R. Case No. 532 of 2007 with respect to the petitioner should be quashed.

9. Accordingly, it is ordered.

10. In the result, the CRLMC stands allowed to the extent indicated. As necessary corollary, order of cognizance dated 25th February, 2011 and consequential order of issuing NBW dated 30th March, 2011 in G.R. Case No. 532 of 2007 pending in the file of learned J.M.F.C., Rajgangpur, Sundargarh is hereby quashed vis-à-vis the petitioner.

(R.K. Pattanaik)
Judge



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