

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1566 of 2011

Manoj Kumar Swain *Petitioner*
versus-
State of Orissa and another *Opposite Parties*

CORAM: JUSTICE S. PUJAHARI

Order
No.

ORDER
25.02.2022

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 dated 24th February, 2011 passed by the learned S.D.J.M., Birmaharajpur in I.C.C. No.2 of 2011 wherein the learned S.D.J.M. has taken cognizance of the offence under Section 384 of I.P.C. against him, as well as the entire proceeding.
3. Heard the learned counsel for the Petitioner and the learned counsel for the State-Opposite Party No.1.
4. No one appears on behalf of the Opposite Party No.2-Complainant.
5. As it appears, the vehicle in question of the Opposite Party No.2-Complainant stated to have been forcibly taken by the Petitioner, who was the then IIC of Birmaharajpur Police Station, on 30th December, 2010. Therefore, a complaint was filed against the Petitioner in the Court of S.D.J.M.,

Birmaharajpur wherein the learned S.D.J.M., Birmaharajpur stated to have taken cognizance under Section 384 of I.P.C. for extortion vide impugned order. But, it appears that the vehicle in question has been seized in connection with an accident case. Pursuant to the seizure of the offending vehicle, an application under Section 457 of Cr.P.C. was filed before the learned S.D.J.M., Birmaharajpur by the Opposite Party No.2-Complainant for releasing the vehicle in question in his favour being its registered owner. The learned S.D.J.M., vide its order dated 15th March, 2011 directed to release the vehicle in his favour on certain terms and conditions.

6. The materials on record would go to show that the Petitioner had taken the vehicle of the Petitioner to his possession in connection with a case and seized the same. The Petitioner, therefore, being justified under law, to do the same. It is fallacious to say that prima facie he had committed extortion for taking the vehicle to his possession. Therefore, the aforesaid act of the Petitioner does not amount an offence in view of the mandate of Section 79 of I.P.C. Otherwise also, the Petitioner being admittedly public servant having taken away the vehicle and the said act even constitute an offence, but the same having reasonable connection in discharge of his official duty inasmuch as the said vehicle was stated to been taken during the course of investigation of an accident, the Court could not have taken cognizance in absence of sanction under Section 197 of Cr.P.C. Hence, cognizance and the consequential proceeding against the Petitioner is liable to be

quashed on the absence of sanction of the appropriate Government under Section 197 of Cr.P.C.

7. Accordingly, the Criminal Misc. Case is allowed. Consequently, the criminal proceeding in I.C.C. No.2 of 2011 on the file of the learned S.D.J.M., Birmaharajpur against the Petitioner is hereby quashed. The learned S.D.J.M., Birmaharajpur or the Court in seisin over the matter shall on receipt of this order/production of the certified copy of this order, close the proceeding in the aforesaid case in compliance of this order.

(S. Pujahari)
Judge

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