

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.5574 of 2014

Santosh Sahu @ Santosh Kumar Sahu

Petitioner

Mr. S.K. Jena. Advocate

-Versus-

State of Odisha and another

....

Opposite Parties

Mr. A.P. Das, ASC

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
24.06.2022

Order
No.

- 03.
1. Heard learned counsel for the petitioner and learned counsel for the State.
 2. This is an application under Section 482 Cr.P.C. assailing the impugned order dated 24th July, 2014 corresponding to G.R. Case No.168 of 2010 arising out of I.C.C. Case No.02 of 2014 pending in the file of learned S.D.J.M., Birmaharajpur on the grounds inter alia that it is bad in law and therefore, deserves to be set aside.
 3. Learned counsel for the petitioner submits that even by considering the complaint and the facts alleged therein, no case is made out against the present accused, who is the Government official and has not been alleged of directly receiving the water tax and an amount of Rs.10,000/-sanctioned by the Government for repair and maintenance of the L.I. point, Buraghat. It is further submitted that water tax amounting to Rs.6,800/- was received by the Secretary of

Panipanchayat and so also the above amount of Rs.10,000/- and therefore, allegation of misappropriation of fund is prima facie not made out but then, the learned court below, after charge sheet without being alive to the nature of allegations and not considering the evidence collected during investigation and despite the fact that there was no material to show any direct involvement took cognizance of the offence punishable under Section 409 IPC and therefore, under the above circumstances, the proceeding is required to be quashed.

4. Mr. Das, learned counsel appearing for the State submits that as to receipt of water tax and the amount of Rs.10,000/-sanctioned by the Government for repair and maintenance of the L.I. point besides the other allegation as to the illegal lease of a motor pump alleged against the accused persons are to be examined and thrashed out during trial which cannot be considered for the purpose of quashing of the proceeding exercising jurisdiction under Section 482 Cr.P.C.

5. It is apprised to the Court by citing the charge sheet that the accused, namely, Sudam Das who was the Secretary of Panipanchayat at the relevant point of time is no more and since he died, the case was submitted only against the petitioner being the JE, L.I. point, Buraghat with the allegation that there was connivance between him and the deceased accused in the misappropriation of water tax and sanctioned amount of Rs.10,000/-. In course of investigation, as it appears from the charge sheet i.e. Annexure-3, the complainant, namely, opposite party No.2 alleged the involvement of the petitioner. Considering the complaint as well as charge sheet and having regard to the nature of allegations made and charge under Section 409 IPC, prima facie, a case stands against the petitioner which requires further enquiry. The nature of involvement as to whether

there was connivance or it was entirely the overt act committed by the other accused regarding misappropriation of amount of Rs.10,000/- sanctioned by the Government and water tax received at that point of time amounting to Rs.6,800/- is question of fact which is to be examined during trial. In any case, the Court is of the view that the petitioner still has a chance to raise all such points at the time of framing of charge seeking discharge before the learned court below. In other words, considering the factual aspects of the matter with regard to misappropriation which is, prima facie, revealed from the FIR and also on account of filing of charge sheet, the Court is not inclined to examine in piece meal, the involvement of the petitioner, especially when connivance has been alleged by the complainant, and as such, it is not a fit case where inherent jurisdiction is to be exercised.

6. In the result, CRLMC stands dismissed. However, the petitioner is at liberty to point out the grounds before the learned court below at the time of framing charge, which on being raised by him, shall be examined by the court below and pass appropriate order in accordance with law.

(R.K. Pattanaik)
Judge