

IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR

CRLMC No.5 of 2014

Babaji Swain & Others

....

Petitioners

Mr.Anirudha Das, Advocate

-Versus-

State of Odisha and Another

....

Opposite Parties

Mr. Pradip Kumar Rout, AGA, OP No.1

Mr. H.N. Mohapatra, Advocate for OP No.2

CORAM:

JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT:16.12.2022

1. Impugned order dated 7th September 2013 passed in G.R. Case No.531 of 2013 by the learned J.M.F.C., Nuapada for having taken cognizance of the offences under Sections 323, 294, 354, 427, 506 read with 34 IPC besides Section 3(1)(x) of SC & ST (PoA) Act is under challenge on the grounds inter alia that the dispute between the parties is civil in nature as the petitioners had initiated a proceeding under Section 144 Cr.P.C. and also instituted a suit in C.S. No.10 of 2010 before the court of learned Civil Judge (Junior Division), Nimapara with reliefs of declaration of right, title and interest and for confirmation of possession in respect of the case land and that apart, the alleged offences have not been made out against them even by looking at the materials on record.

2. In fact, opposite Party No.2 lodged the FIR (Annexure-1), consequent upon of which, Nimapara P.S. Case No.131 dated 18th June, 2013 was registered and ultimately, it led to the filing of chargesheet (Annexure-2) under the alleged offences and by the impugned order dated 7th September, 2013 (Annexure-3), the CRLMC No.5 of 2014

learned J.M.F.C., Nimapara took cognizance of the offences. In so far as the alleged incident dated 18th June, 2013 is concerned, it has been described in Annexure-1 by opposite party No.2 as to the manner and circumstances under which she was abused, assaulted and threatened by the petitioners.

3. Heard Mr.Anirudha Das, learned counsel for the petitioners, Mr.P.K. Rout, learned AGA for the State-opposite party No.1 and Mr. H.N. Mohapatra, learned counsel for opposite party No.2.

4. The principal ground of challenge is that the dispute inter se parties to be civil in nature as they are in litigating terms before the civil court as well as both sides had been involved in a proceeding under Section 144 Cr.P.C. and according to Mr. Das, due to the civil litigation, the criminal proceeding initiated at the behest of opposite party No.2 should not be allowed to continue and therefore, the impugned order under Annexure-3 and the proceeding as a whole should be quashed in the interest of justice. Apart from the above, Mr. Das submits that the materials on record do not prove the offences, inasmuch as, the learned court below did not apply its judicial mind rather arbitrarily took cognizance of the alleged offences and summoned the petitioners.

5. Mr. Rout, leaned AGA on the other hand submits that the FIR and the chargesheet with all other materials prima facie establish the alleged overt acts having been committed by the petitioners and therefore, the learned court below did not commit any wrong or error or illegality in taking cognizance of the offences by the impugned order under Annexure-3. Likewise, Mr. Mohapatra, learned counsel for opposite party No.2 justified the order of cognizance in the light of the evidence produced along with chargesheet, hence, submitted that the order under Anneuxre-3 does not call for any interference.

6. During the alleged incident dated 18th June, 2013, the petitioners said to have assaulted and outraged modesty of opposite party No.2 and also manhandled her husband, who received a head injury. The incident said to have happened during the day time and opposite party No.2 mentioned the names of the petitioners in Annexure-1. After the investigation, the chargesheet was filed.

7. It is made to suggest that there has been a dispute between the parties which is not denied by opposite party No.2. A civil suit is stated to be pending before the court of learned Civil Judge, Nimapara in C.S. No.10 of 2010. It is also made to reveal that the parties had even engaged themselves in a proceeding under Section 144 Cr.P.C. However, the question is, whether, under such circumstances and for the fact that the parties are already into litigation, the criminal proceeding in G.R. Case No.531 of 2013 pending in the file of learned J.M.F.C., Nimapara should be interfered with and quashed?

8. If the dispute is civil in nature, no criminal case may be allowed to continue. But if both the proceedings can survive and go along independently, it has to be so. At times, a civil litigation has criminal overtone and in such a situation, both the proceedings may have to be continued. But where a dispute of civil nature is painted with a brush of criminality, it has to be nipped in the bud. However, if for a pending civil dispute and litigation between the parties, an incident happens resulting in commission of offences punishable under law, the criminal prosecution cannot be tinkered with for its root cause. In other words, only if the dispute appears to be civil in nature but has been given a criminal colour, the Court is to exercise its inherent jurisdiction to interfere with it but not otherwise on the premise that the cause of an incident leading to the offences committed to be on account of a

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civil dispute. In the instant case, no doubt, the cause behind the alleged incident is on account a civil dispute between the parties but for that the criminal proceeding initiated against the petitioners cannot be quashed, since such a case is not to be equated with a civil litigation artificially blended with a criminal flavour. It is not unusual to experience crimes being committed due to civil disputes between the parties and that does not mean the criminal prosecutions to be tampered with on such ground. To say it differently, if a purely civil dispute is sought to be given a colour of a criminal offence to wreak vengeance, it would not meet the strict standard of proof required to sustain a criminal accusation. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong as has been succinctly put in **Devendra Kumar Tyagi and Others Vrs. State of U.P. and Others** reported in (2011) 9 SCC 164. Mr. Das, learned counsel for the petitioners has attempted to bring the case within one of the categories as illustrated in the decision (supra). But with due respect, the Court is in clear disagreement to accept such a contention since the case at hand is not of such category where it can be said that a civil wrong is painted with a criminal tinge.

9. In the instant case, an incident has happened and offences said to be committed by the petitioners, truthfulness or otherwise of which, shall have to be tested on the floor of the court. Since prima facie a case is made out on a bare consideration of the materials on record, it would rather be apposite to make a mention of a judgment of the Apex Court in **CBI Vrs. Duncans Agro Industries Ltd., Calcutta** reported in **AIR 1996 SC 2452**, wherein, it is observed that for the purpose of quashing a complaint, it is necessary to consider whether the allegations therein prima facie make out an offence or not; it is not necessary to scrutinize, if the allegations are likely to be upheld in the trial;

any action in that regard to be taken at the threshold before evidences are led in support of the complaint; it is therefore necessary to consider whether on the face of the allegations, a criminal offence is constituted or not. Looking at Annexure-1 and chargesheet with other materials, accepting the same at its face value, according to the Court, do make out a case for enquiry and trial and in any view of the matter, the contention of the petitioners of a civil wrong has been fully discarded, hence, no ground or any reason exists for interference in exercise of its inherent jurisdiction.

10. Accordingly, it is ordered.

11. In the result, the petition stands dismissed.

(R.K. Pattanaik)
Judge

U.K. Sahoo