IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1901 of 2016

Chamarulal Agrawal. .... ***Petitioner***

Mr. Ashok Mohanty, Sr. Advocate.
Mr. B.K. Nayak, Advocate

-versus-

State of Odisha & another. .... ***Opposite Parties***

Addl. Standing Counsel – For O.P. No.1-State
None – For O.P.No.2

CORAM:
JUSTICE S. PUJAHARI

O R D E R
23.08.2022

Order No.

08. **1.** This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") seeking for quashing of the proceeding in 2(c) C.C. No.2 of 2016 pending in the Court of the learned S.D.J.M., Sonepur, against the petitioner, on the ground that for the selfsame alleged incident, the petitioner has been subjected to several other proceedings at the instance of the opposite party no.2

2. Heard the learned counsel appearing for the parties and perused the relevant papers on record vis-à-vis the contentions raised by the petitioner vide his application at hand.

3. As it appears, on 21.11.2014 at about 5 p.m., the A.S.I. of Police, Tarva Police Station in course of his patrolling, detected one TATA-207 vehicle bearing registration No.OR-15-K-4997 being engaged in transportation of 11 Barrel of Kerosene oil, and since the driver of the vehicle and his two companions failed to produce valid documents in support of that transportation, FIR was lodged by the ASI of Police, and on the basis of the same, Tarva P.S. Case No.132 of 2014 corresponding to G.R. Case No.408 of 2014 was registered under Sections 379/411/34 of IPC and Section 7 of the Essential Commodities Act, 1955 (for short "the E.C. Act"), and on completion of investigation, police submitted charge-sheet in the said case against five accused persons including the present petitioner for the said offences. On the basis

of the same, Tarva P.S. Case No.132 of 2014 corresponding to G.R. Case No.408 of 2014 was registered under Sections 379/411/34 of IPC and Section 7 of the Essential Commodities Act, 1955 (for short "the E.C. Act"), and on completion of investigation, police submitted charge-sheet in the said case against five accused persons including the present petitioner for the said offences. On the basis of a report being submitted by the Inspector of Supplies, Tarva, regarding seizure of kerosene oil and the vehicle by police in connection with the aforesaid case, a proceeding bearing E.C. Case No.11 of 2014 was also registered before the Collector, Subarnapur on 23.11.2014 under Section 6-A of the E.C. Act, and in the said proceeding order was passed by the Collector on 28.11.2014 for disposal of the seized kerosene oil. While the matter stood thus, the opposite party no.2 about one year after the aforesaid occurrence filed a complaint before the learned SDJM, Sonepur vide 2(c) C.C. No.2 of 2016 against the present petitioner (Proprietor of M/s. Shankar

Galla Bhandar, Kerosene Oil Wholesaler, Sonepur) and the Manager of the said Firm, under Section 9 of the E.C. Act. The learned S.D.J.M. having taken cognizance of the offences under Sections 7 & 9 of the E.C. Act against them, the present petition has been filed for quashing of the said proceeding.

4. It is the submission of the learned senior counsel appearing for the petitioner is that the genesis and cause of action being same in all the proceedings, the last proceeding, i.e., the prosecution launched vide 2(c) C.C. No.2 of 2016 is not sustainable in law, being violative of Article 20(2) of the Constitution of India. It is his contention that with malafide intention the aforesaid prosecution has been belatedly initiated to harass the petitioner, and the same needs to be quashed.

5. Per contra, it is the submission of the learned counsel appearing for the State that, the aforesaid proceeding having been launched upon the complaint

filed by the opposite party no.2 for a distinct offence, the contention of the petitioner is not acceptable.

6. As it appears, the prosecution vide G.R. Case No.408 of 2014 has been launched for the offences under Sections 379/411/34 of IPC and Section 7 of the E.C. Act, the proceeding vide E.C. Case No.11 of 2014 has been registered before the Collector, Subarnapur under Section 6-A of the E.C. Act which is a confiscation proceeding, and the 2(c) C.C. No.2 of 2016 has been filed by the opposite party no.2 seeking for prosecution of the petitioner and co-accused under Section 9 of the E.C. Act on allegation that the accused persons manipulated the Issue Register by making false entries regarding issue of Kerosene oil to Retailers without delivering the stock to them, and furnished false information in the Books of Account by putting forged signature of the Retailers showing issue of stock.

7. Section 3 of the E.C. Act has vested power to the Government to control production, supply, distribution etc. of essential commodities, by making order, regulation etc., and Section 7 of the E.C. Act provides for penalty for contravention of any order made under Section 3 of the E.C. Act. Section 9 of the E.C. Act, on the other hand for giving false statement in contravention of any order under Section 3 of the E.C. Act, or for making any false statement in the book, account, declaration, record etc. have been made punishable. It thus appears that the wrong or contravention made punishable under Section 9 of the E.C. Act is distinct in nature, not covered by the penal provision under Section 7 of the E.C. Act. Hence, the prosecution launched vide 2(c) C.C. No.2 of 2016 is for a separate offence than the ones for which the G.R. Case No.132 of 2014 has been registered. Needless to mention that the proceeding vide E.C. Case No.11 of 2014 before the Collector is a confiscation proceeding which is different from a criminal prosecution. Hence, initiation and

continuance of the proceeding vide 2(c) C.C. No.2 of 2016 for the offence under Section 9 of the E.C. Act in the court of the learned S.D.J.M., Sonepur can not be treated as illegal or prejudicial to the petitioner. Furthermore, Article 20(2) of the Constitution speaks of Autrefois Convict has absolutely no application to the aforesaid case.

8. In the result, the CRLMC being found to be bereft of any merit stands dismissed.

(S.Pujahari)
Judge

MRS