

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 71 of 2021

Lambodara Dash & Others

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Petitioners

Mr. D.P. Dhal, Sr. Advocate

-Versus -

State of Odisha & Another

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Opposite Parties

Mr. P. Tripathy,

Addl. Standing Counsel

Mr. R. K. Panda, Advocate

For Opposite Party No.2

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

25.11.2022

Order No.
09.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the parties.
3. The petitioners are aggrieved by the order dated 19.01.2021 passed by the learned Sub-Divisional Magistrate, Balasore in Misc. Case No. 60 of 2020 initiated under Section-133 of the Cr.P.C .
4. The facts of the case are that on the basis of a complaint lodged by the present Opposite Party No.2, a proceeding under Section-133 of the Cr.P.C. was initiated, which culminated in orders dated 15.07.2020 and 30.07.2020 whereby, the learned S.D.M., Balasore directed the petitioners to clear the obstruction over the case land. The petitioners carried the matter in Revision to the Court of Sessions in Criminal Revision No.10/13 of 2020 and Criminal Revision No.11/14 of 2020, both of which were disposed of by a common judgment passed by the learned 2nd Additional Sessions Judge, Balasore on 11.09.2020. Learned 2nd Additional Sessions Judge,

Balasore set aside the impugned orders and remanded the case to the learned S.D.M., Balasore for disposal afresh according to law. The question of maintainability of the proceedings was raised on behalf of the petitioners before the learned S.D.M., Balasore on remand by referring to judgments passed in a civil suit. By the impugned order, the learned S.D.M., Balasore rejected the petition on maintainability.

5. It is submitted by Mr. D.P. Dhal, learned Senior Counsel appearing for the petitioners that the order is cryptic and non-speaking. Further, the contentions of the petitioners were not considered at all. Learned Senior Counsel has also filed a copy of the memo of citations in support of his contentions.

6. Mr. Ramakanta Panda, learned counsel appearing for the Opposite Party No.2 submits that the road in question being a public road, the Sub-Divisional Magistrate has rightly held the proceeding to be maintainable.

7. I have considered the rival submissions and have also gone through the materials on record. It goes without saying that once the question of maintainability of a proceeding has raised before any authority, the same is required to be answered at the outset. Further, such answer has to be supported by proper reasons. Reason is the soul of an order passed by a quasi-judicial authority without which, the order becomes susceptible to challenge.

8. In the instant case, when the question of maintainability was raised by the petitioners being supported by some judgments, it was incumbent upon the learned Magistrate to have considered the same and to pass a reasoned order. On

behalf of the petitioners, the judgment passed in a Civil Suit and an Interlocutory Application was cited. Though the learned Magistrate has indicated in the order to have perused the judgments but no reason has been cited, stating as to why the same were held to be not applicable to the facts of the case.

9. Considering the above, this Court is of the view that the impugned order being a non-speaking one, cannot be sustained in the eye of law.

10. The Criminal Revision is therefore, allowed. The impugned order is set aside. The matter is remanded to the learned S.D.M., Balasore to consider the contentions raised by the petitioners with regard to maintainability afresh after giving proper opportunity to both the parties and to pass a lawful and reasoned order. The parties are directed to appear before the learned Sub-Divisional Magistrate on 14th December, 2022 for receiving further instructions.

11. Urgent certified copy of this order be granted as per rules.

Balaram

(Sashikanta Mishra)
Judge