IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.669 of 2019

Sambit Ray. .... ***Petitioner***

Mr. Asok Mohanty, Sr. Advocate

-versus-

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

Addl. Standing Counsel – For the O.P. No.1-State
Mr. D.P. Dhal, Sr. Advocate – For the O.P. No.2

CORAM:
JUSTICE S. PUJAHARI

ORDER
13.05.2022

Order No.	
19.	**1.** The petitioner seeks to invoke the power of this Court under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") for quashing of the F.I.R. and the proceeding in C.T. Case No.3841 of 2018 pending in the court of the S.D.J.M., Bhubaneswar corresponding to Sahidnagar P.S. Case No.387 of 2018 registered under Sections 420/406 of IPC against him.

2. Heard the learned counsel for the parties and perused the relevant papers on record.

3. The accusation giving rise to registration of the case, in brief, is that the petitioner entered into an agreement with the Informant-opposite party no.2 on 01.11.2011 to sell three plots total measuring Ac.0.720, and on receiving a sum of Rs.30 lakh from the opposite party no.2 under receipt handed over to him the original sale deed, and that subsequently, he cheated the opposite party no.2 by selling the land in question to different other persons on different dates which came to the knowledge of the opposite party no.2 in June, 2018 whereafter he lodged the report with police.

4. The learned senior counsel appearing for the petitioner submits, inter-alia, that the Informant-opposite party no.2 being a Builder having Real Estate business has foisted the false case in order to pressurize the petitioner to sell his land at low rate. It is the contention of the petitioner that for his legal necessity and being in search of purchaser for sale of his land, he engaged one Kuna @ Debendra Kumar Dhal, who was working as Agent of the Informant-builder and other builders, to find out purchasers, and that as per mutual arrangement, the petitioner handed over the original sale deeds to the said Agent on the latter's saying that those deeds would be shown to the intending purchasers for verification. It is his further case that he had also given some blank cheques (with no signature) to the said Agent, to be used towards payment of commission to the Agents after execution of sale deeds, and that the Informant managed to take away those original sale deeds and blank cheques from the Agent, and prepared agreement for sale without the knowledge and signature of the petitioner, and misused the blank cheques by forging the signature of the petitioner showing the same to be of Rs.30 lakh issued by the petitioner. It be mentioned here that the said cheque having been dishonoured by the Bank for difference in signatures, the present opposite party no.2 has filed a complaint bearing I.C.C. No.1250 of 2012. According to the petitioner, the facts pleaded and evidence adduced by the opposite party no.2 in the aforesaid complaint case run contrary to the accusation made in the present case giving rise to grave suspicion as to the probative value of the case of the Informant. The petitioner also denies to have received any money from the Informant or to have executed money receipt of Rs.30 lakh. It is argued by the learned senior counsel for the petitioner that for the selfsame alleged transaction / incident there having already been filed I.C.C. No.1250 of 2012 by the present opposite party no.2, launching of the present prosecution is a sheer abuse of the process of the Court, and the F.I.R. being tainted with falsity and concoction, continuance of the proceeding would not only be a futile exercise but also cause gross prejudice to the accused-petitioner.

5. It is, however, the submission of the learned senior counsel appearing for the opposite party no.2 that the present being not a case to scuttle the prosecution at its inception, the interference of this Court under Section 482 of Cr.P.C. is not called for. It is his argument that the grounds taken by the accused-petitioner are nothing but his plea of defence which requires to be substantiated by him through evidence at the appropriate stage of the proceeding, and not at the present stage. His further submission is that the allegations made in the FIR being supported by documentary proof, it cannot be said that the proceeding is absurd or tainted with ulterior motive.

6. As to the scope and ambit of jurisdiction of High Court under Section 482 of Cr.P.C., the Apex Court in the case of ***State of Haryana & others vrs. Bhajanlal & others,*** reported in 1992 Suppl.(1) SCC 335 held as follows:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without any order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

7. Referring to the above proposition, the Apex Court in ***Priti Saraf and another vrs. State of NCT of Delhi and another,*** reported in (2021) 82 OCR (SC) 442, observed as follows:-

"26. This Court has clarified the broad contours and parameters in laying down the guidelines which have to be kept in mind by the High Courts while exercising inherent powers under Section 482 CrPC. The aforesaid principles laid down by this Court are illustrative and not exhaustive. Nevertheless, it throws light on the circumstances and the situation which is to be kept in mind when the High Court exercises its inherent powers under Section 482 CrPC.

27. It has been further elucidated recently by this Court in Arnab Manoranjan Goswami v. State of Maharashtra and others, 2020 SCC Online SC 964 where jurisdiction of the High Court under Article 226 of the Constitution of India and Section 482 CrPC has been analysed at great length.

28. It is thus settled that the exercise of inherent power of the High Court is an extraordinary power which has to be exercised with great care and circumspection before embarking to scrutinize the complaint/FIR/charge-sheet

> in deciding whether the case is the rarest of rare case, to scuttle the prosecution at its inception."

8. From a bare perusal of the FIR, it can not be said that the allegations made therein are inherently improbable or absurd, or that the basic ingredients of Sections 406 and 420 of IPC are not made out prima-facie. Pendency of a complaint case which is reportedly instituted for the offence under Section 138 of the NI Act can not be taken as a circumstance or ground to question the maintainability of the present case which is registered under Sections 406/420 of IPC. The counter allegations brought by the petitioner against the Informant as to forgery, manipulation of documents etc. may afford him a plea of defence, but the same cannot be considered to scuttle the prosecution at its inception.

9. Keeping in view the legal proposition and having regard to the rival submissions and also the facts as emerged from the record, this Court is not inclined to interfere with the proceeding at this stage.

Hence, this Court does not find it to be a fit case to be interfered with under Section 482 of Cr.P.C.

10. In the result, the CRLMC is dismissed.

(S.Pujahari)
Judge

MRS