

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2187 of 2016

***Padmanav Mohapatra and
another***

....

Petitioners

Ms. P. Dasmohapatra, Advocate

-versus-

State of Odisha and another

....

Opp. Parties

Mrs. S. Patnaik, AGA

CORAM:

JUSTICE CHITTARANJAN DASH

DATE OF JUDGMENT : 09.11.2022

Chittaranjan Dash, J

1. Heard learned counsel for the parties.
2. By means of this application, the Petitioners seek to challenge the order of cognizance dated 30th March, 2016 under Annexure-2 passed in G.R. Case No.1283 of 2013 arising out of I.C.C. Case No.235 of 2015 pending in the files of learned J.M.F.C.(P), Kujanga.
3. The background facts of the case is that the complainant Namita Mohapatra presented a complaint before the J.M.F.C.(P), Kujanga alleging that one Tapas Routray of village Hansura under P.S. Kujanga district Jagatsinghpur forced his entry in the dwelling house of the complainant on 1st April, 2013 at about 8 p.m. taking advantage of the absence of her husband and demanded refund of Rs.20,000/- taken as hand loan by her husband and thereafter forcibly necked her, embarrassed and made her to lay on the ground and forcibly kissed her time and again on all sensitive part of the body of the complainant and

attempted to establish physical contact with her against her wishes. As the complainant raised outcry, the accused Nos. 2 and 3 entered inside and scolded the complainant in obscene words and threatened to commit her murder so also her family members if she would report before the Police and took to their heel. Having come to know about the incident, the husband of the informant brought it to the notice of the village gentries to which they assured to settle the matter but the said persons remained adamant and did not turn out for the settlement for which the complainant was constrained to bring the complaint.

4. The learned Magistrate referred the complaint to the Police under Section 156(3) Cr.P.C. for investigation and accordingly the Police registered the P.S. Case No.375 of 2013 and submitted the final form whereupon the learned court took cognizance of the offence upon registration of the G.R. Case No.413 of 2015 under challenge before this Court.

5. It is submitted by the learned counsel for the Petitioners that in the entire gamut of the report, there appears no material against the present Petitioners who allegedly to be on the village road at the relevant time. It is further submitted that the averments made in the original complaint bearing I.C.C. Case No.235 of 2015 finds no corroboration to the statement of the complainant and her co-sister in law as recorded under Section 161 Cr.P.C. Learned counsel, therefore, submitted that the alleged complaint is nothing but a deliberate hatching of the case as concocted against them so as to cause harassment and there being no material to attribute the offence alleged against them, the cognizance deserves to be quashed.

6. Learned counsel for the State on the other hand submitted that the averments in the complainant attribute the overt act and there is no infirmity in the order impugned in taking cognizance.

7. Admittedly, the G.R. Case No.1283 of 2013 has been initiated pursuant to the I.C.C. Case No.235 of 2013 referred by the learned J.M.F.C. for the police to investigate U/s.156 (3) Cr.P.C.

8. Perusal of the complaint in I.C.C. Case No.235 of 2013 while prima facie reveals the allegations against one Tapas Routray constituting the alleged offence; no material seems to have been brought against the present Petitioners as the allegations simply discloses that the present Petitioners were standing on the village road at the relevant time. Very surprisingly the averments in the complaint Petition in 1 C.C. Case No.235 of 2015 and the statement of the complainant and the material witness Soubhagini Das recorded U/s.161 Cr.P.C. are completely different. While the averments in the complaint petition in I.C.C. Case No.235 of 2013 reveals wild allegations constituting the offences alleged, no such narration has been made either by the complainant or the material witness Soubhagini in their statement recorded by the police during investigation U/s. 161 Cr.P.C. The statement recorded under Section 161 Cr.P.C. prima facie does not reveal any overt act in the alleged crime so also their presence.

9. It is also important to note that the statement of other witnesses recorded U/s. 161 Cr.P.C even discloses the happening of any such incident. Consequently, there is no indulgence of the Petitioners in the alleged crime much less to speak of a conviction. Relying upon the decisions of this Court in the case of ***Surendra Kumar @ Surendra***

Routray and another v. State of Orissa reported in 2011 (1) OLR 1052, Aditya Kumar Rath v. State of Orissa (2008) 41 OCR 233 and the judgment of the Apex Court in *Central Bureau of Investigation v. Akhilesh Singh* in support of the contentions of the Petitioners, the continuation of the criminal proceeding against the present Petitioners would amount to an abuse of the process of law, more fully when there is least possibility of their conviction.

10. Considering, therefore, the judgments relied upon, the facts and circumstances of the case, this Court is of the considered view that the continuation of the criminal proceeding against the present Petitioners would be an abuse of process of law and no useful purpose would be served by allowing the criminal proceeding against the present Petitioners and as such the ends of justice would be met if further proceeding in respect to the Petitioners is quashed.

11. Accordingly, the proceeding in G.R. Case No.1283 of 2013 arising out of I.C.C. Case No.235 of 2015 pending on the files of learned J.M.F.C.(P), Kujanga is hereby directed to be quashed.

12. The CRLMC is accordingly disposed of.

(Chittaranjan Dash)
Judge