

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3783 of 2016

Amiya Kumar Samal and others *Petitioners*
versus-
Pratima Manjari Mohanty *Opposite Party*

CORAM: JUSTICE S. PUJAHARI

ORDER
22.03.2022

Order
No.

09.

1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. filed by the Petitioners with a prayer to quash the order dated 4th January, 2016 passed by the learned S.D.J.M., Bhubaneswar in 1.C.C. No.1367 of 2015, taking cognizance of the offences under Sections 294, 323, 354, 506 read with Section 34 of the I.P.C.
3. Heard.
4. The Petitioners have challenged the order of cognizance taken in the aforesaid complaint petition, which was instituted by the Opposite Party, as well as proceeding against them.
5. It is the contention of the learned counsel appearing for the Petitioners that the allegation made against the Petitioners is false and concocted inasmuch as which is reflected from the fact that though Petitioner No.1, who is a Government doctor, was on duty on the date and time of occurrence, but a false and concocted allegation was made against them due to some land dispute. The court, therefore, without

scanning the materials as produced should not have taken cognizance of the same and proceeded against the Petitioners. The said order therefore having passed in mechanical manner, the same is liable to be quashed.

6. However, learned counsel for the Opposite Party seeks adjournment of the case. But, I am not inclined to do so, since the case is year old one.

7. Needless to say that at the time of taking cognizance of the offences, the court has to consider only the averments made in the complaint or in the charge sheet filed, as the case may be. At this stage, it is not open to the court to sift or appreciate the evidence with reference to the materials and come to the conclusion that no prima facie case is made out for proceeding further matter. But, before issuing process, the Court has to record the evidence or on consideration of the averments made in the complaint and the evidence thus adduced, it is required to get whether the offence has been made out. On finding that such an offence has been made out and the involvement of the persons who have committed the offence, it has to proceed against the person for the disclosed offences, for which, cognizance has been taken. Therefore, it is not within the province of the court to embark upon and sift the evidence to come to a conclusion whether an offence has been made out or not against the accused at that stage.

8. In view of the aforesaid, I am unable to accept the submission of the learned counsel for the Petitioners that since the court failed to appreciate that the Petitioner No.1 being a Government servant and on duty at the relevant point of time and there was civil dispute between

the parties, the cognizance and the issuance of process against the Petitioners though prima facie its speaks of commission of the offences was illegal, is without any substance.

9. However, since it is complaint case and the same is triable of warrant procedure and the Petitioners have a chance of cross-examining the witnesses tendered before charge, the Petitioners at the time of charge may makes such submission before the trial court that no case is made out against him which goes unrebutted would end in conviction, the Court shall on sifting the materials as available after making hearing before charge address such prayer of the Petitioners without being influenced by reluctance of this Court to interfere with the order of cognizance.

10. With the aforesaid order, this CRLMC stands dismissed.

(S. Pujahari)
Judge

DA