

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1154 of 2019

Lulu Sahu.

....

Petitioner

*M/s. H.S. Mishra, G. Pradhan,
R. Dash, Advocates*

-versus-

State of Odisha.

....

Opposite Party

Addl. Standing Counsel – For O.P.-State

**CORAM:
JUSTICE S. PUJAHARI**

**ORDER
30.08.2022**

**Order
No.**

12. **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 orders dated 26.12.2018 and 05.02.2019 passed by the learned J.M.F.C., Reamal in C.T. Case No.99 of 2018 taking cognizance of the offences under Sections 399 and 402 of IPC qua the petitioner.
- 2.** Heard the learned counsel for both the sides and perused the relevant papers on record vis-à-vis

the contentions raised by the petitioner vide his application at hand.

3. It is alleged that on receiving reliable information regarding a preparation for commission of the offence of dacoity, S.I. – Babita Dehury, Khairpali Police Outpost under Kundheigola Police Station being accompanied by other police staff rushed to the spot, i.e., Hadasanhara Colony Sahi and found some persons being engaged in preparation to commit dacoity. It is further alleged that on seeing the police party, the culprits attempted to flee away, and after being chased, while two of those culprits were caught hold of, the present petitioner and two others managed to escape. The Police-party also found one Mini Truck bearing registration No.OR-15-E-6227 being parked near the spot which on being driven by a co-accused, namely, Chakradhar had been brought by the petitioner and other co-accused persons for the purpose of committing the crime of dacoity. During the search of the person of the co-accused persons,

who were caught hold of at the spot, and the aforesaid Mini Truck, cash of Rs.26,220/-, some weapons of offence, Chilli powder and some other incriminating objects were recovered and seized by the S.I. of Police at the spot. The co-accused arrested at the spot named the petitioner. Pursuant to a written report of the aforesaid incident being lodged, a case was registered at Kundheigola Police Station, and on completion of investigation, charge-sheet was filed on 05.02.2019 against five accused persons including the present petitioner under Section 399 and 402 of IPC and some Sections of the Motor Vehicles Act and, accordingly, cognizance was taken by the learned J.M.F.C., Reamal vide order dated 05.02.2019. Vide the charge-sheet, the present petitioner and another co-accused were shown as absconders. Prior to submission of charge-sheet, on the prayer of the Investigating Officer, the learned J.M.F.C., Reamal issued N.B.W. against the present petitioner as well as another co-accused vide the order dated 26.12.2018. Hence, the present

application by the accused-petitioner seeking for quashing of the order dated 05.02.2019, vide which cognizance has been taken of the offences under Sections 399 and 402 of IPC against him, and also the order of issuance of N.B.W. against him.

4. It is the submission of the learned counsel for the petitioner that since neither the petitioner was present at the spot at the time of the raid allegedly conducted by the Informant-Police officer, and the materials collected by the Investigating Officer in course of investigation having not made out any circumstance regarding involvement of the petitioner in the alleged crimes, and the petitioner having been arraigned as a co-accused allegedly on the basis of the statement of co-accused, the impugned orders are illegal warranting interference by this Court. It is his further submission that the Police having never searched for the petitioner or required his attendance, the order passed by the learned J.M.F.C., Reamal issuing N.B.W. against him is also prejudicial to him.

It is stated that the petitioner is a respected businessman of the locality having no criminal antecedent.

5. On the other hand, the learned counsel appearing for the opposite party-State submits that taking note of the nature of accusation brought against the petitioner and the co-accused persons, there should not be any insistence of direct evidence regarding involvement of any particular member of the Gang. According to him, the materials collected during investigation are sufficient to take cognizance of the offences and directing the petitioner and his confederates to be proceeded against.

6. Having gone through the police papers on record, this Court finds merit in the contention raised on behalf of the petitioner. There is no legal evidence that the petitioner was present at the spot when the raid was conducted by police except the statement of some of the co-accused persons caught hold of at the

spot, implicating the petitioner made before the police. To put in other words, there is hardly any legal evidence to prove the charge against the petitioner.

7. In the context, it would be apposite to refer to the case of ***R.P. Kapur vrs. State of Punjab***, reported in AIR 1960 S.C. 866, wherein the Apex Court held as under:-

“xxxxx It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the

said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. xxxxxxxx”

[Underlining of mine]

8. In the facts and circumstances of the case, and keeping in view the principle of law as quoted above, the impugned orders are liable to be quashed, inasmuch as in absence of any legal evidence,

continuance of the proceeding against the petitioner will amount to abuse of the process of the Court.

9. In the result, the CRLMC is allowed, and the impugned orders stand quashed qua the petitioner.

10. Urgent certified copy of this order be granted on proper application.

MRS



*(S.Pujahari)
Judge*