

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 4460 of 2015

Ananta Charan Nayak and another **Petitioners**
Mr. Prasanna Kumar Mishra, Advocate

-Versus-

Sisira Charan Nayak **Opposite Party**
None

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
17.08.2022

Order No.

- 06.
1. Heard learned counsel for the petitioners. None appears for opposite party despite valid service of notice.
 2. The instant petition under Section 482 Cr.P.C. has been filed by the petitioners for quashing of the order of cognizance dated 28th November, 2014 in I.C.C. No.51 of 2014 passed by the learned S.D.J.M., Kamakhyanagar on the ground stated therein.
 3. Perused the FIR (Annexure-1) and other documents, copies of the final report and the complaint in I.C.C. No.51 of 2014.
 4. Learned counsel for the petitioners submits that initially the opposite party filed a complaint in I.C.C. Case No.64 of 2013 later to which the court below directed registration of a case and accordingly, G.R. Case No.410 of 2013 was registered under Sections 420/341/294/307/506/34 of I.P.C. It is further contended that on completion of investigation, a final report was submitted on

30th November, 2013, whereafter, the learned court below passed the order dated 26th February, 2014 of issuing notice to the opposite party to file protest petition, if any by 8th May, 2014. It is also submitted that the opposite party did not file any protest petition in the aforesaid case i.e. G.R. Case No.410 of 2013 for which the case was dropped. According to learned counsel for the petitioner, despite closure of the case, the opposite party filed another complaint in ICC Case No.51 of 2014, wherein, the court below passed an order under Section 156(3) CPC and directed registration of a case, in response to which, the I.I.C. of Kamakhyanagar P.S. intimated about lodging of an FIR earlier for the self-same cause of action stating that a case in G.R. Case No.410 of 2013 had been registered which ultimately ended in submission of a final report. It is lastly submitted that in spite of such an intimation received by the learned court below, the impugned order dated 28th November, 2014 was passed in I.C.C. No.51 of 2014 and not only that, the opposite party in that complaint suppressed the fact of filing of the previous complaint and then registration of G.R. Case No.410 of 2013 and regarding the final report and in such view of the matter, the proceeding pending before the court below should be quashed in the interest of justice.

5. The learned counsel for the petitioners submitted that the opposite party sold his share in the property in favour of petitioner No.1 but when the land was acquired in a land acquisition proceeding, the former claimed share in the amount of compensation to which it is pleaded that he was not entitled to for having already parted with the property.

6. It is alleged that an amount of Rs.4,95,615/- was the amount which was awarded towards compensation for acquisition

of the land in favour of the opposite party as well as petitioner No.1 with equal share, which was misappropriated by the latter. It is in fact the allegation based on which the latter complaint in 1.C.C. No.64 of 2013 has been filed. In the earlier complaint, the local police was directed to register a case and as mentioned before, after registration, it led to the submission of a final report but as it appears, without disclosing the above fact, the opposite party filed second complaint, wherein, the order of cognizance under Annexure-7 was passed. Furthermore, the learned court below even called for a report from the local police and such a report under Annexure-4 was received, however, without any reference to the same, the order under Annexure-7 was passed. Of course, the court below proceeded under Section 200 Cr.P.C. and also conducted an enquiry under Section 202 Cr.P.C. and finally passed the order of cognizance under Sections 406/420 of I.P.C. and summoned the petitioner.

7. Having regard to the above facts, such as, filing of the complaint and submission of final report in G.R. Case No.410 of 2013 and subsequent complaint in ICC No.51 of 2014 being filed without stating the fact of final report, the report of the IIC, Kamakhyanagar P.S. under Annexure-4 having not been examined and furthermore, this Court recording the submission of Mr. Mishra, the learned counsel for the petitioners to the effect that the final report was accepted and the case was dropped in G.R. Case No.410 of 2013 is of the considered opinion that the court below was not authorized to proceed further and hence, it has to be held that the order of cognizance dated 28th November, 2014 (Annexure-7) in ICC No.51 of 2014 is not sustainable in law and therefore, the same is liable to be interfered with.

8. At the cost of repetition, it is concluded that for the self-same cause of action, a case was registered which was enquired into and investigated upon by the local police and a final report was submitted therein and the aforesaid fact should have been brought to the notice of the court below by the opposite party while filling the subsequent complaint and that apart, the court below ought to have considered the intimation received vide Annexure-4 and the fact that the final report was accepted and G.R. Case No.410 of 2013 was dropped before proceeding with ICC Case No.51 of 2014 which has not been accomplished and that being the state of affair, it is a fit case where inherent jurisdiction under Section 482 Cr.P.C. is required to be exercised

9. Accordingly, it is ordered.

10. In the result, the CRLMC stands allowed. Consequently, the proceeding in ICC No.51 of 2014 pending in the file of the learned S.D.J.M., Kamakhyanagar is hereby quashed.

(R.K. Pattanaik)
Judge

U.K. Sahoo