

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1282 of 2016

AFR

Sagar Kumar Biswal

....

Petitioner

Mr. R. K. Mallick, Advocate

-versus-

State of Orissa

....

Opp. Party

Mr.S.S. Pradhan, A.G.A.

CORAM:

JUSTICE G. SATAPATHY

ORDER

27.10.2022

Order No.

- 04.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. This is an application by the Petitioner under Section 482 Cr.P.C. seeking to quash the order passed on 24.10.2012 by learned J.M.F.C. (P), Kujanga in G.R. Case No.135 of 2009 taking cognizance of offences under sections 341/294/506/307/34 IPC read with Sections 25 and 27 Arms Act.
 3. The kerfuffle leading to lodging of FIR before the IIC Paradip Police Station on 20.03.2009, by one Prasant Kumar Swain , R/O- Plot No. C/106 of Paradip, to the effect that while he was coming from his house, near Madhuban Airtel Tower, Babu Parida, Baba Swain, Sagar Biswal (Petitioner), Kalia Jena and Pintu by coming in three motor cycles, one red color Bolero bearing the Registration No. OR-21A-2875 and one black color Karizma Motor Cycle bearing Registration No. OR-21B-2247 intercepted him by keeping their vehicles in front of him and Babu Parida and Baba Swain by taking out gun placed on his ear and abused him in filthy language by saying “ELECTION BHITARE JADI AMA NAA RE THIBA FIR IN G.R. CASE NO. 12 OF 2009 JADI NA UTHAU TAHALE TATE O TO PARIBARA KU MUNA PATI KU MURDER KALA VALI TAMA BANSA KU NIPAT KARI

DABAKU”(if you do not withdraw the FIR against us in G.R. Case No. 12 of 2009 within the election period, then you and your entire family would be murdered like Muna Pati) and by saying so Bapu Parida fired one round from his gun which did not hit him. Despite he having met to the Higher Official of Police about this case prior to this incident, he was attempted to be killed on that day. On the basis of the FIR, the I.O. investigated into the matter and submitted charge-sheet against the Petitioner and others for different offences. However, the Petitioner Sagar Kumar Biswal has been charge-sheeted for offences punishable under Sections 341/294/506//307/34 of IPC read with Sections 25 and 27 Arms Act. 5. On conspectus of materials and documents submitted by the I.O. and finding prima facie case, the learned J.M.F.C. (P), at Kujanga by the impugned order took cognizance of aforesaid offences.

4. Being aggrieved, the Petitioner has challenged the order taking cognizance for aforesaid offences in this application under Section 482 Cr.P.C.

5. In the course of hearing, the CRLMC application Mr. Rakesh Kumar Mallick, learned counsel appearing for the Petitioner submits that there is absolutely no material on record to implicate the Petitioner for either offences under Sections 25 and 27 Arms Act or any other offences as no overt act has been attributed to the Petitioner. He also submits that the I.O. has submitted charge-sheet by pick and choose method and he has charge-sheeted some of the co-accused persons by not incorporating Section 307 of IPC and Sections 25 and 27 Arms Act in the final form against them and in this regard, learned counsel for the Petitioner referred to the charge-sheet submitted against the accused Bapu @ Amiyakanta @ Jyotikanta @ Jyotiranjana Parida and Baba @

Ashutosh Swain for offences under Sections 341/294/506/34 of IPC r/w 25 and 27 Arms Act. Learned counsel for the Petitioner also submits that the learned J.M.F.C. in a mechanical manner has taken cognizance of offences by the impugned order without applying judicial mind ignoring the above facts and therefore, the cognizance taken by the learned J.M.F.C., is bad in the eye of law. It is also submitted by placing reliance on the FIR and 161 Statement of some witnesses that no overt act has been attributed against the Petitioner for either using any Pistol or assaulting the informant. Learned counsel for the Petitioner submits that the I.O. has mechanically submitted charge-sheet against the Petitioner by incorporating offence under Section 307 of IPC and Sections 25 and 27 of Arms Act. While summing up his argument, learned counsel for the Petitioner prays to quash the impugned order by which cognizance of offences has been taken and process was issued against the Petitioner.

6. In reply, learned counsel for the State submits that the I.O. has rightly submitted the charge-sheet with the aid of Section 34 of IPC incorporating offences under Section 307 of IPC against the Petitioner and against some of the co-accused persons by not incorporating offence under Section 307 of IPC. It is further submitted that the I.O. has taken into consideration the individual alleged overt act and filed the charge-sheet in this case and the impugned order passed by the learned J.M.F.C is perfect is justified in the eye of law and therefore, this Court should go slow in interfering a legally justified order. It is accordingly prayed to dismiss the CRLMC application.

7. After having considered the materials on record upon reference to the rival submissions of the parties, there appears allegation against the Petitioner and the I.O. has submitted charge-sheet against the Petitioner with the aid of Section 34 of IPC. Law is well settled that if an

accused person shares common intention with co-accused persons to commit a crime in furtherance of their common intention, the said accused person is liable for the act done by other co-accused persons which is the mandate of Section 34 of IPC which contemplates the acts done by several persons in furtherance of common intention and when the criminal act is done by several persons in furtherance of common intention of all, each of such person is liable for that act in the same manner, as if it were done by him alone. The essence of liability under Section 34 of IPC being on the principle of joint and vicarious liability lies with the existence of pre-arranged plan and acting in concert pursuant to such pre-arranged plan. The common intention as contemplated under the aforesaid section can be inferred from the facts and circumstances of a case. It is undoubtedly advanced for the Petitioner that he was merely present at the spot and no overt act has been attributed against the Petitioner, but the allegation appearing in the FIR against the Petitioner and others itself indicative of putting the informant in fear for withdrawing another criminal case in G.R. Case No. 12 of 2009 and although there may not be any overt act attributed against the Petitioner, whose alleged presence at the spot by coming along with other co-accused persons in different vehicles, it cannot be concluded that the Petitioner was not sharing common intention with other co-accused persons especially in an application U/S 482 Cr.P.C., wherein this Court should go slow from appreciating the statements of witnesses and FIR thread bare. In invoking the inherent power U/S 482 of Cr.P.C., the Court should not hold any mini trial to appreciate meticulously the materials and documents on record to arrive at any conclusion about the merit of the case and merely because another view is possible on conspectus of some of the materials on record, the Court should not exonerate the accused from the criminal liability, which is to

be found out in a trial on the touch stone of proof beyond all reasonable doubt.

8. It is never in dispute that the Petitioner has challenged the impugned order on the ground of his not having any individual criminal liability, but on a scour of the materials placed on record, it appears that there are allegations against the Petitioner for coming to the spot of occurrence along with others and intercepting and restraining the informant as also abusing him in filthy language for putting him (informant) in fear to withdraw another criminal case and there also appears further allegation about co-accused firing at the informant in the same transaction. There appears no denying to the principle of vicarious criminal liability for sharing common intention and in this case, the said principle has been applied against the Petitioner. Besides, the impugned order only says about taking cognizance of offences but it does not distinguish the criminal liability of each of the accused persons, who can advance/ raise those points of individual criminal liability at later stage of consideration of charge and it is needless to say that the Petitioner can also raise all those points for his individual liability at the time of consideration of charge.

9. In the present case, the Petitioner has been alleged for commission of serious and heinous as also grave offences. In the oft quoted and celebrated decision in the matter of exercise of inherent powers to quash criminal proceeding in *State of Haryana and others V/s. Bhajanlal and others; 1992 Supp(1) SCC 335*, while observing that it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae, the Apex Court has given a categories of cases by way of illustration where such power could be exercised either to prevent abuse of process of Court or otherwise to secure ends of the justice and out of such

categories of cases, this Court can exercise such power in the following one, which is relevant to answer the contention advanced for the Petitioner.

“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.”

10. This Court could not be satisfied by the Petitioner that there is no allegation appearing against him nor is any offence made out against him. A careful application of the above principle to the case at hand, it can neither be said that the allegation on FIR and the supporting materials collected by the Investigating Agency do not disclose commission of any offence nor make out a case against the Petitioner. Further, the order impugned in this case if tested on the touch stone of the provision of Section 190 of Cr.P.C., by taking into consideration the allegation in the FIR and statement of witnesses and other materials on record, no illegality or perversity is found with the order taking cognizance of offence by the learned J.M.F.C., so as to warrant any interference by this Court.

11. In view of the facts and circumstance, so also the principle of law as discussed herein above and taking into consideration the impugned order on the face of the uncontroverted allegations made in the FIR and the materials so collected by the Investigating Agency, this Court does not find any error or illegality with the impugned order taking cognizance of offences so as to require any interference by this Court.

12. In the result, this CRLMC sans any merit is dismissed on contest but in the circumstance without any cost.

