

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.529 of 2014

Srimati Dei & Ors.

....

Petitioner(s)

Mr.Ashok Kumar
Mohapatra. Advocate

-versus-

Kasinath Behera

....

Opposite Party(s)

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
09.03.2022**

Order No.

5.

1. This Civil Miscellaneous Petition involves a challenge to the rejection of an application at the instance of the petitioner in the trial court asking the trial court to reject an application under Section 340 of the Code of Criminal Procedure moved at the instance of adversary for having no substance. Undisputedly, the application under Section 340 of the Code of Criminal procedure is pending adjudication. The provision at Section 340 of the Code of Criminal Procedure reads as follows:

340. Procedure in cases mentioned in section 195- (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub- section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

- (a) record a finding to that effect;
- (b) make a complaint thereof in writing;
- (c) send it to a Magistrate of the first class having jurisdiction;
- (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub- section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

[(b) in any other case, by the presiding officer of the Court or by such Officer of the Court as the Court may authorize in writing in this behalf].

(4) In this section," Court" has the same meaning as in section 195.

Reading the aforesaid provision this Court finds on being filed an application under Section 340 of the Code of Criminal Procedure to a Court on the particular allegation following the provision of Section 340 of the Code of Criminal Procedure proceeding, such Court to enter into preliminary inquiry and to pass order in the manner prescribed therein. One of the component therein, in the event of satisfaction of such Court, he shall sent such allegation to a Magistrate of the first class having jurisdiction undertaking the required exercise.

2. Petitioner assailing the rejection of the application to reject the application under Section 340 of the Code of Criminal Procedure contend the application so filed is absolutely vague and on false and incomplete contrary to the materials available on record. Petitioner here thus alleges for the clear provision in Section 340 of the Code of Criminal Procedure, in the preliminary inquiry,

there is no scope for participation of the petitioner as an objector to such inquiry and therefore petitioner has reasonably apprehend that there might be wrong order resulting forwarding the complain to a Magistrate for appropriate exercise. For the clear provision in Section 340 of the Code of Criminal Procedure and for the opinion of this Court even though there is requirement of a preliminary inquiry without involvement of the persons likely to be affected, it becomes more onerous for a Court for having preliminary inquiry in such matters and ultimately an order need to be passed in consideration of the issue keeping in mind the recourse available. Even assuming order is passed appearing to be contrary to the material available on record, even at the time of sending the order to Magistrate, if aggrieved petitioners still have option to challenge such order or recommendation to the Magistrate and get the issue adjudicated. It is keeping this in view, this Court finds there is no scope in interfering in such matters at this stage. Consequently the Civil Miscellaneous Petition stands disposed of.

(Biswanath Rath)
Judge