

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2976 of 2014

Balabhadra Deep

....

Petitioner

-versus-

State of Odisha & another

....

Opposite Parties

CORAM: JUSTICE S.PUJAHARI

ORDER

22.06.2022

Order
No.

04.

1. This matter is taken up by Hybrid mode.
2. This application under Section 482 Cr.P.C. has been filed by the Petitioner for quashment of the order dated 8.5.2014 passed by the learned S.D.J.M, Koraput in ICC No.15 of 2014 wherein the learned S.D.J.M has taken cognizance under Sections 342/109 IPC against him.
3. Heard learned counsel for the Petitioner. None appears for the Opposite Party No.2, when the matter was called.
4. It appears that Opposite Party No.2 made a complaint against the present Petitioner before the court below alleging therein that on 06.04.2014 when the Complainant-Opposite Party No.2 was in his house, the present Petitioner entered into his house in civil dress, took the Complainant to the Police Station and confined him till 4 P.M and thereafter forwarded him to the court of learned S.D.J.M., Koraput in connection with Koraput Town P.S. Case No.34 of 2014 lodged by one Rama Sethi-accused no.1 in the said complaint for alleged commission of offence punishable

under Sections 294/341/506 IPC and Section 3(i)(x) of the SC & ST (PA) Act. It is stated that though the present Petitioner was intimated that for the same occurrence another case i.e. ICC Case No.70 of 2013 has been filed by Rama Sethi wherein further proceeding of the said case has been stayed by this Court in WP(C) No.230 of 2014 but the Petitioner did not pay any heed to the same and abusing his official position stated to have proceeded against the Complainant-Opposite Party No.2.

5. Learned counsel for the Petitioner submits that in the case initiated against the Opposite Party No.2, the Complainant filed the aforesaid Koraput Town P.S. Case No.34 of 2014. The Petitioner was the Investigating Officer and in due discharge of his official duty he arrested him and forwarded to the court. In such case there was no prohibitory order passed not to take him to custody. For the self-same cause of action, ICC Case might have been registered as alleged and the further proceeding of the said case might have been stayed by the court which was also not brought to the notice of the Petitioner. Therefore, the Petitioner in due discharge of official duty took the accused to custody and for the same, he could not have been proceeded with for the illegal confinement of the Opposite Party No.2. The Petitioner having taken the Opposite Party No.2 to custody in due discharge of the official duty, without any sanction, even if he had committed an offence, he could not have been proceeded by the court taking cognizance of the offence under Sections 342/109 IPC. Therefore, the order of cognizance in the absence of the sanction being unsustainable, the proceeding against the Petitioner along with cognizance is liable to be quashed, submits the learned counsel for the Petitioner.

6. Though the Complainant-Opposite Party No.2 has engaged a counsel, but none appears for the Opposite Party No.2 when the matter was called.

7. On consideration of the facts and the submissions made, especially the circumstances in which the present Petitioner has been indicted, this Court is of the view that the act of the present Petitioner has nexus in discharge of official duty, as revealed from the materials on record. Hence, the trial court could not have taken cognizance in the absence of any sanction under Section 197 Cr.P.C. from the appropriate Government against the Petitioner. This Court, therefore, in exercise of the inherent power under Section 482 Cr.P.C. allows this Criminal Misc. Case and consequently ICC Case No.15 of 2014 pending in the court of learned S.D.J.M., Koraput stands quashed qua the Petitioner. The court concerned shall do the needful to close the proceeding against the Petitioner in view of the aforesaid order, on receipt of the certified copy of this order or communication from this Court, whichever is earlier.

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

(S. Pujahari)
Judge

PKS