

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.819 of 2012

Brundaban Naik *Petitioner*
versus-
State of Orissa and another *Opposite Parties*

CORAM: JUSTICE S. PUJAHARI

Order
No.

ORDER
22.03.2022

05. 1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order of cognizance dated 21st September, 2010 passed by the learned S.D.J.M., Titlagarh in G.R. Case No.212 of 2009.
3. Heard the learned counsel for the Petitioner and the learned counsel for the State-Opposite Party No.1. No one appears on behalf of the Opposite Party No.2-Informant.
4. The Petitioner has sought for quashment of the aforesaid order wherein the cognizance of the offence under Section 341, 323, 294, 354 and 506 of the I.P.C. read with Section 3 of the S.C. & S.T. (PoA) Act has been taken against him.
5. The contention that is advanced by the learned counsel for the Petitioner is that the Petitioner is the recorded tenant of the land appertaining to Plot No.34, Holding No.44, Mouza-

Badmal, P.S.-Saintala, Tahasil-Titlagarh and one Balistha Kumbhar @ Narendra Kumbhar, Purusottam Bag, Murali Bag, who happens to be the husband of the Informant, forcibly occupied the land of the Petitioner, for which, the Petitioner submitted a grievance petition before the authority concerned, for which, an enquiry was conducted by the Tahasildar, Titlagarh and after proper enquiry and demarcation of the land in question, the Tahasildar, Titlagarh has held that the case land is recorded in the name of one Managobinda Naik, who is the predecessor of interest of the present Petitioner and the aforesaid persons are in forceful occupation of the said land recorded and have constructed a dwelling house. So, their being encroacher, he directed that to vacate the occupied places and since they did not vacate the land, two suits, i.e., Civil Suit Nos.115 and 116 of 2005 have filed by the Petitioner for declaration of the right, title and interest and permanent injunction before the learned Civil Judge (Senior Division), Titlagarh against the encroachers which were decreed in their favour and their possession was confirmed. So also the defendants were permanently restrained from interfering with the possession of the Plaintiff-Petitioner. Aggrieved by the aforesaid judgment, the Petitioner has been falsely implicated in a case by the accused persons. Therefore, the Petitioner has prayed for quashment of the said proceeding.

6. During the course of hearing, learned counsel for the Petitioner submits that a false and frivolous allegation has been made against the Petitioner to frustrate the order of the civil

court, which is apparent from the F.I.R. allegation and the aforesaid case as such being initiated being actuated with malice to harass the Petitioner, this Court should quash the prosecution initiated against the Petitioner in exercise of power under Section 482 of Cr.P.C.

7. However, learned counsel for the State defended the impugned order on the ground that the aforesaid is no ground to come to a conclusion that the case was filed with an oblique motive to harass the Petitioner, notwithstanding the decree in favour of the Petitioner.

8. In the case of ***Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., reported in (2000) 3 SCC 269***, the Apex Court have held as follows:-

“Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgement of first information report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the court on a perusal of the complaint comes to a conclusion that the allegations leveled in the complaint or charge-sheet on the face of it do not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law. To exercise powers under Section 482 of the Code, the complaint in its entirety will have to be

examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear ex facie on the complaint. The truth or falsity of the allegations would not be gone into by the Court at this earliest stage. Whether or not the allegations in the complaint were true is to be decided on the basis of the evidence led at the trial.

9. It is only in cases when the allegations in the complaint do not make out any case against the accused nor do they disclose the ingredients of an offence alleged against the accused or the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion that there is sufficient ground for proceeding against the accused, the power under Section 482 Cr.P.C. has to be exercised to quash the prosecution, is also the view in the case of *Medchl Chemicals & Pharma (P) Ltd.* (supra). Besides the same, if any statutory bar is there to proceed against the accused persons, the Court shall also not proceed against them.

10. Reverting the case in hand, the materials on record reveals a prima facie case against the Petitioner for committing the alleged offences. But, the learned counsel for the Petitioner submits that since there was civil litigation between the parties, the aforesaid allegation has been made being actuated with malice. However, the Court at the stage of taking cognizance as held in the case cited supra being not supposed to scrutinize the veracity of the version, but to take prima facie view and the

case of the Petitioner being not covered by any of the aforesaid conditions as mentioned in preceding para, this Court is unable to accept the submission advanced to quash the cognizance in exercise of its inherent power under Section 482 of Cr.P.C., moreso when the aforesaid contention is to look into the veracity of the person and basing on the same to quash the prosecution, which is also not available in view of the ratio laid down by the Apex Court in the case of *Medchl Chemicals & Pharma (P) Ltd.* (supra).

11. Hence, the prayer made to quash the impugned order of cognizance as well as the proceeding against the Petitioner is devoid of merit.

12. Accordingly, the CRLMC stands dismissed.

13. Order be communicated to the court below to proceed in the aforesaid case as the same is year old one.

(S. Pujahari)
Judge

DA