

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1788 of 2012

Subrat Ranjan Prusti

....

Petitioner

Mr. P. Ch. Mohapatra, Advocate

-Versus-

State of Orissa and another

....

Opposite Parties

Mr. P.K. Mohanty, ASC

CORAM:

JUSTICE R.K. PATTANAIK

DATE OF JUDGMENT:04.07.2022

1. The petitioner has filed the instant petition under Section 482 Cr.P.C. challenging the legality and judicial propriety of the impugned order dated 6th August, 2011 passed in 1CC Case No.501 of 2011 by the learned S.D.J.M. Sadar, Cuttack and also to quash the complaint instituted by O.P.No.2 on the grounds *inter alia* that it is an outcome of malafide intent in order to harass him, inasmuch as, no prima facie case is made out and that apart, there is a civil dispute pending between the parties for which the criminal action cannot be sustained and moreover, he has been falsely roped for him having acquaintance with accused No.1, the latter being his tenant.

2. The learned court below has taken cognizance of offences under Sections 341, 323, 294 and 506 read with 34 IPC against the petitioner and other accused persons named in the complaint (Annexure-5). In fact, O.P.No.2, who is the complainant, has also filed a suit bearing C.S. No.82 of 2011 against accused No.1 seeking reliefs, such as, declaration of right, title, interest and confirmation of possession, permanent injunction besides cancellation of sale

deed vis-à-vis the sold land. In so far as the complaint is concerned, it is in connection with an incident dated 30th May, 2011. The details of the alleged occurrence have been narrated by O.P.No.2 in Annexure-5, particularly, with regard to the mischief committed by the accused persons. After the complaint was filed, the learned court below recorded the initial statement of O.P.No.2 and two of the witnesses during enquiry under Section 202 Cr.P.C. and finally, took cognizance of the alleged offences by order dated 6th August, 2011 vide Annexure-6. The grounds upon which the petitioner challenged the order of cognizance have been stated earlier. The primary contention of the petitioner is that the dispute arises out of a civil dispute between the parties to the alleged sale deed which was sought to be cancelled by O.P.No.2 by filing C.S. No.82 of 2011 and therefore, a criminal action cannot lie and furthermore, he is remotely connected to the alleged dispute and has been implicated since accused No.1 happens to be his tenant. Precisely on the above grounds, the petitioner seeks indulgence of the Court for quashing of the complaint and Annexure-6.

3. Heard Mr. P.Ch. Mohapatra, learned counsel for the petitioner and Mr. P.K. Mohanty, learned ASC for the State. Notice as against O.P.No.2, as revealed from the record, though was issued by registered post but the A.D. returned unserved with a postal endorsement 'not known'. As no further notice was directed to be issued against O.P.No.2, the Court proceeded to hear the matter for its final disposal.

4. In **State of Haryana and others Vrs. Bhajan Lal and others (1992) Supp.1 SCC 335**, the Apex Court had the occasion to examine the scope of inherent power of the High Court in interfering with the investigation by the police and laid down certain guidelines and enunciated that the investigation of an offence is the domain of the police having the power to investigate

as per the provisions of Chapter-XII of the Cr.P.C. and the Courts are not justified in obliterating the track of investigation and further observed that if the allegation made in the FIR do not disclose or constitute any cognizable offence or the allegations are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, under such circumstances, inherent power may be exercised. In **State of A.P. Vrs. Golconda Linga Swamy and another (2004) 6 SCC 522**, the Supreme Court highlighted upon the circumstances under which jurisdiction under Section 482 Cr.P.C. could be exercised (a) to give effect to an order under the Cr.P.C., (b) to prevent abuse of process of the Court; and (c) to otherwise secure the ends of justice reiterating the principles delineated in **Bhajan Lal** case (supra).

5. If the above decisions are properly read and understood, it would convey that in case where there is a need to prevent abuse of process of the court or to secure the ends of justice, inherent jurisdiction under Section 482 Cr.P.C. may be exercised. Such exercise of power would depend on the facts and circumstances of each particular case. If no case at all is made out even by considering the facts alleged in the FIR or complaint, under such circumstances, the criminal proceeding may be terminated. It is also a settled law that a criminal action may not be allowed to survive if the remedy lies in civil law and in such situation, jurisdiction under Section 482 Cr.P.C. may also be invoked. In other words, for cases which are essentially civil in nature but have been given a cloak of criminal offence shall have to be interfered with by exercising the inherent jurisdiction of the Court.

6. Admittedly, from the materials on record, it appears that a sale deed came to be executed between O.P.No.2 and accused

No.1 and thereafter, some dispute arose which led to the institution of the suit in C.S. No.82 of 2011 (a copy of the plaint is at Annexure-2) for cancellation of the sale deed with other consequential reliefs. The petitioner is not a party to the sale deed but claims that he has been falsely implicated being the landlord of accused No.1. However, the complaint rests on an incident dated 30th May, 2011 and it has been alleged by O.P.No.2 that while he was proceeding in a cycle, all the accused persons including the petitioner followed him in a car bearing registration No.OR-02-0016 and restrained him near a temple and in course of events, abused and assaulted him by fist blows and kick but was rescued by the passersby. For the above incident, the complaint is stated to have been filed which happened after filing of the suit in the March, 2011 as revealed from Annexure-4.

7. According to the petitioner, on account of such a dispute vis-à-vis the alleged transaction under Annexure-1, O.P.No.2 with a malafide intention filed the complaint which is out and out false, more particularly for the reason that accused No.1 alleged to have appeared in the suit on 12th August, 2011, whereas, the cause of action for filing it is dated 30th May, 2011 and on that score alone, the proceeding is liable to be quashed for being vexatious and furthermore when it has been primarily directed to wreck vengeance. On some other grounds as well, the complaint is challenged including the sustainability of the criminal action which arises out of a civil dispute. Lastly, it is contended that considering the facts of the complaint, chances of conviction is also bleak and therefore, no useful purpose would be served by allowing the prosecution to continue.

8. In **Gian Singh Vrs. State of Punjab and another (2012) 10 SCC 303**, the Supreme Court had the occasion to discuss in detail

the different aspects of overtures of a civil dispute vis-à-vis criminal matters and the need of exercise inherent jurisdiction under Section 482 Cr.P.C. In fact, the above decision the Apex Court was considering the correctness of its earlier decisions in the case **B.S. Joshi:(2003) 4 SCC 675**; **Nikhil Merchant:(2008) 9 SCC 677**; and **Manoj Sharma:(2008) 16 SCC 1** and observed that the power possessed by the High Court under Section 482 Cr.P.C. is of wide amplitude but requires its exercise with great amount of caution and circumspection. In so far the present case is concerned, it is not that O.P.No.2, who is a party to the alleged transaction under Annexure-1 approached the learned court below does not relate to the execution of the sale deed which is sought to be cancelled by filing the civil suit but concerns a specific incident dated 30th May, 2011 during which he was restrained, abused and assaulted by the other accused persons including the petitioner. Admittedly, the complaint has been filed after the suit in C.S. No.82 of 2011 was instituted in the month of March, 2011. It has been alleged by O.P.No.2 in the complaint that the above incident happened since accused No.1, who is the vendee to the sale deed and others committed the mischief with a purpose forcing him to withdraw the case from the court of Civil Judge (S.D.), Khurda. It is an independent cause of action for the filing of the complaint which is not in any way concerning the transaction dated 12th December, 2010. Rather, the allegation is about coercing or threatening O.P.No.2 to withdraw the suit and for having been abused and assaulted on 30th May, 2011. So, therefore, the challenge to the complaint on the ground that it arises out of a civil wrong cannot be sustained. It is reiterated that for the alleged criminal mischief by the accused persons which includes the petitioner, the complaint was filed by O.P.No.2. It is another thing to allege that the complaint was filed with an oblique motive and to harass the petitioner which can only be ascertained during the trial. Having

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considered the facts of the complaint and taking into account the nature of allegations made therein, it is undeniable that the petitioner is named along with other accused persons including the purchaser under the sale deed. The truthfulness or otherwise of the alleged claim of O.P.No.2 has to be examined by the court below only after receiving evidence and obviously at the end of the trial. Applying the principles enunciated by the Supreme Court in **Bhajan Lal** case (supra), the Court holds that prima facie, a case is made out against the petitioner, whose involvement even though has not specifically been alleged in the complaint and as already stated, truthfulness or falsity of the allegation is required to be examined during the trial. The other factual grounds raised by the petitioner cannot be considered by the Court at this stage which would be lying within the domain of the trial. Furthermore, though accused No.1 entered his appearance in the suit on 12th August, 2011 but then, it had already been filed prior to the filing of the complaint for a cause of action dated 30th May, 2011. Having considered all the grounds of the petitioner, the Court is not inclined to exercise its inherent jurisdiction as the complaint is clearly maintainable notwithstanding the alleged civil dispute, which, rather, emanates from an independent cause of action.

9. Accordingly, it is ordered.

10. In the result, the petition under Section 482 Cr.P.C. filed by the petitioner stands dismissed.

(R.K. Pattanaik)
Judge