

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1884 of 2012

Dr. Nalini Sharma and another ***Petitioners***
versus-
State of Odisha ***Opposite Party***

CORAM: JUSTICE S. PUJAHARI

Order
No.

ORDER
25.04.2022

04.

1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioners with a prayer to quash the order of cognizance dated 15th December, 2011 passed by the learned S.D.J.M., Angul in G.R. Case No.913 of 2011.
3. Heard the learned counsel for the Petitioners and the learned counsel for the State-Opposite Party.
4. The Petitioners in this case having been proceeded under Section 5 of the Medical Termination of Pregnancy Act, 1971 read with Section 41 of Violation of Clinic Establishment Act, 2010 have challenged the order of cognizance and proceeding against them.
5. As it appears, the Petitioners, who are doctors couple, stated to be allegedly making termination of pregnancy in their home wherefrom different articles related to pregnancy was found by the State authority authorized for the purpose to verify

such under the P.C. & P.N.D.T. Act, so also the C.D.M.O. concerned. But, during such search, nothing was found to indict them under the P.C. & P.N.D.T. Act. However, since they kept the articles use for termination and make confession that termination of the pregnancy was made and it was not under the P.C. & P.N.D.T. Act for termination of the pregnancy, they have been prosecuted.

6. Mr. A. S. Nandy, learned counsel appearing for the Petitioners submits that proceeding against the Petitioners is misconceived inasmuch as there is no material to show that they were at all engaged in termination of pregnancy. As such, the Court could not have proceeded against them on the basis of the statement of some of the witnesses, who made raid, and the so-called confession of one of the Petitioners as well as on the basis of police report.

7. However, learned counsel for the State defended the same.

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. On consideration of the facts and submissions made as well as the law laid in the case of *Medchl Chemicals & Pharma (P) Ltd.* (supra), this Court is of the view that the impugned order of cognizance and proceeding against the Petitioner does not require any interference, as the case of the Petitioners is not covered by any of the circumstances as laid down in the case of *Medchl Chemicals & Pharma (P) Ltd.* (supra) for quashment of the prosecution.

11. Accordingly, the CRLMC stands dismissed.

12. However, the trial court while proceeding with the trial shall not be influenced by any of the observation made above as this Court has rendered the same with regard to cognizance of an offence and the trial court during the trial has rendered his judgment basing on the evidence that is to be brought on record.

(S. Pujahari)
Judge

DA