

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1871 of 2010

Sri Satya Paul

....

Petitioner

versus-

State of Orissa

....

Opposite Party

CORAM: JUSTICE S. PUJAHARI

ORDER

14.03.2022

Order
No.

30.

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 dated 15th September, 2009 passed by the learned S.D.J.M. (Sadar), Cuttack in G.R. Case No.1427 of 2006, taking cognizance of offences under Sections 406, 408, 467, 468, 471, 420, 506 and 120-B of the I.P.C., so also the final charge sheet, so far Petitioner is concerned.
3. Heard Mr. Goutam Mukherji, learned Senior Counsel appearing for the Petitioner, Mr. Soura Chandra Mohapatra, learned counsel appearing for the Informant and learned counsel for the State.
4. The allegation of the prosecution is that the Petitioner, who was the Executive Secretary of Board of Management of Servant of People Socieity (SOPS), Cuttack Branch and one Braja Bhai, who was former life member of SOPS and the

General Manager of 'Samaj', a Odia daily newspaper were joint authorized signatories for drawal of amount from different accounts maintained by SOPS in different banks of SOPS. As it appears, prima facie they stated to have drawn a cheque in the name of M/s. Podar Global Ltd., New Delhi, a Newsprint supplier to 'Samaj' for supply of newsprints without demand of the said agency regarding any outstanding bill or advance demanded and also without any amount sanctioned on the note in the appropriate file and production of the cheque in this regard by person entrusted with the same indicating that such a bill of aforesaid newsprint supplier is pending and, as such, cheque placed for their signature for payment. It appears that cheque leaves of the account maintained in Canara Bank in the custody of Braja Bhai. The same as such was misused by drawing the same in the name of M/s. Poddar Global Ltd. and withdraw by forged stamp of the said M/s. Poddar Global Ltd. M/s. Poddar Global Ltd. neither stated to have gave the bill nor demanded payment of the amount nor received cheque or the said amount. In such premises, cognizance having been taken of the offences as stated in the impugned order, the Petitioner and others have been proceeded with being part of alleged fraud and forgery committed and entering into a criminal conspiracy for the same.

5. Mr. Goutam Mukherji, learned Senior Counsel for the Petitioner submits that since he signed cheque in good faith

as it was being signed by Braja Bhai and has no role to play in the commission of crime, inasmuch as there is no iota of evidence that he entered into conspiracy with anyone for such misappropriation amount, committing the fraud and forgery much less with Braja Bhai to commit the offence. Hence, the Court should not have mechanically proceed against him, moreso when in the charge sheet filed his name was not found as an accused, but subsequently in the nomenclatured as final charge sheet, he has been indicted as an accused.

6. Per contra, Mr. Soura Chandra Mohapatra, learned counsel appearing for the Informant submits that police in order to obviate to release Braja Bhai then in custody under default bail, pending further investigation filed a preliminary charge sheet and as the Petitioner was not in custody, no charge sheet was filed against him at the first instance. However, subsequently in the final charge sheet has been filed against the Petitioner, as prima facie materials were there, showing his involvement in the case, but not arrested due to old age. The Court at the stage of taking cognizance being not required thresh out the materials on record, but to see whether incriminating material collected that is placed, prima facie discloses the commission of any offence and involvement of the persons indicted, no other alternative is available to the court besides taking of cognizance and proceed against alleged perpetrator of the crime. Of course, the same is subject to certain exception, i.e., statutory bar like

lack of sanction under Section 197 of Cr.P.C., jurisdiction, limitation and etc. There being no such legal impediment in this case and it being clearly emerged that the Petitioner was also the other signatory pursuant to which the amount was drawn, committing fraud and forgery, the defence plea of bona fide and subject to prove, not available to him to be advanced to quash the cognizance and proceeding, this Court while exercising the inherent power under Section 482 of Cr.P.C. which is there to prevent the abuse of the law and for the ends of justice.

7. Learned counsel for the State drawing the notice on the materials on record echoes the submission of the learned counsel for the Informant.

8. However, learned counsel for the Petitioner would reiterate his submission in the rejoinder on the ground that in the meanwhile the newsprint supplier stated to have received the amount.

9. 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.

10. 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).

11. 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 qua the Petitioner does not require any interference, as the case of the Petitioner 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.

12. Accordingly, the CRLMC stands dismissed.

13. However, liberty is given to the Petitioner to raise all the contentions at the time of framing of charge and in that event, the Court shall consider the same on its own merit after hearing the parties and sifting the evidence as required for framing of charge to come to a conclusion that there are sufficient grounds for proceeding against the Petitioner.

14. Needless to say that the Court shall address the question of framing of charge of the Petitioner, if so raises, without being influenced by the order of this Court not to interfere with the order of cognizance.

(S. Pujahari)
Judge