

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC NO.533 of 2016

(In the matter of application under Section 482 of the Criminal Procedure Code, 1973.).

Bikram Pradhan ***Petitioner***

-versus-

State of Orissa and another ***Opposite Parties***

For Petitioner : ***Mr. P.S. Nayak , Advocate***

For Opposite Parties : ***Mr. M. Mishra, ASC***
[O.P. No.1]
Mr. S. Udgata, Advocate
[O.P. No.2]

CORAM:
JUSTICE G. SATAPATHY

DATE OF HEARING :31.10.2022

DATE OF JUDGMENT:10.11.2022

G. Satapathy, J.

1. Aggrieved by the order passed on 30.11.2015 in C.T. Case No.186 of 2011 by which the learned S.D.J.M., Rairakhol took cognizance of offence U/S.436 of IPC, the petitioner has invoked

the jurisdiction of this Court U/S.482 of Cr.P.C. to quash the aforesaid order taking cognizance of offence U/S. 436 of the I.P.C.

2. The relevant facts in precise are that on 21.03.2011 at about 9 P.M. in the night, the house of one Rajkishore Pradhan of village Uparamunda was found burning and due to prior landed dispute with his four brothers, Rajkishore Pradhan suspected the involvement of his four brothers for setting his house on fire and accordingly, he lodged an FIR before the IIC, Kisinda P.S. against his four brothers namely, Gobardhan Pradhan, Ajit Pradhan, Ashok Pradhan and Bikram Pradhan, which was registered vide Kisinda P.S. Case No.03 of 2011 with commencement of investigation by the S.I. of Police, Sarbeswar Samantaray who after conducting the investigation submitted final report as no clue. Pursuant to such final report, the learned S.D.J.M., Rairakhol issued notice to the informant who filed a protest petition in the shape of complaint in C.T. Case No.186 of 2011 in which the initial statement of the complainant U/S.200 of Cr.P.C. and substance of inquiry of witnesses U/S.202 of Cr.P.C. were recorded. In the ultimate appraisal of the complaint together with initial statement of the complainant and substance of inquiry of witnesses U/S.202 of Cr.P.C. and finding a prima facie case,

learned S.D.J.M., Rairakhol by the impugned order took cognizance of offence U/S.436 of IPC and issued process against the petitioner only. Hence, this CRLMC by the petitioner.

3. In the course of hearing the CRLMC, learned counsel for the petitioner by taking through the averments of FIR, complaint and the initial statement of the complainant, submits that the petitioner has never set the house of the informant on fire and the only inference against the petitioner for quizzing others by saying as to “why they were dousing the fire, when the informant has himself set his house on fire”, is forthcoming and, therefore, no offence U/S.436 of IPC is attracted against the petitioner. It is accordingly, prayed to quash the impugned order taking cognizance of offence U/S. 436 of I.P.C. and issuing of process against the petitioner.

4. On the contrary, learned counsel appearing for the opposite party no.2 submits that although it is not found from the record as to who had set the house of the informant on fire but the statement of the complainant and other witnesses as well as the FIR would go to show that the petitioner was preventing others from dousing the fire set to the house of informant which by itself constitute an offence U/S.436 of IPC and therefore, the present application

U/S.482 of Cr.P.C. is not maintainable and liable to be dismissed and the learned Court by the impugned order having taken cognizance of offence on proper consideration of materials on record with sound discretion of judicial mind needs no interference by this Court. It is accordingly prayed to dismiss the CRLMC.

5. On bestowing a careful consideration to the rival submissions, the questions crop up for consideration in the CRLMC are whether the initial statement of complainant together with the statement of witnesses on given facts of the complaint disclose commission of offence U/S.436 of IPC or any other offence and there is sufficient ground for proceeding against the petitioner. In other words, whether there is prima facie case against the petitioner for commission of offence U/S.436 of IPC. Admittedly, there is no direct allegation against the petitioner either in the FIR or in the complaint to evidence that he set fire to the dwelling house of the informant. The uncontroverted facts as per the FIR disclose that the petitioner was found asking others in presence of Antaryami Pradhan and Satrugan Roul as to why they were dousing the fire, when his own brother (informant) has set his own house on fire, but in the complaint, it is stated that the

petitioner had prevented others from extinguishing the fire in presence of Antaryami Pradhan and Satrugan Roul who have been examined as witnesses for the complainant in enquiry U/S.202 of Cr.P.C. and in such enquiry, Satrugan Roul has stated that the petitioner-Bikram Pradhan was saying as to why he was extinguishing the fire and he cannot say as to who had set fire to the house of the complainant. The aforesaid statement was also repeated by witness Antaryami Pradhan exactly in his enquiry U/S.202 of Cr.P.C. The undisputed facts as emerging from the materials on record are that neither anybody had seen the petitioner setting fire to the house of the informant-complainant nor was it alleged against him for setting fire to the house of the informant and the only allegation forthcoming against him is that he was saying to others as to why they were extinguishing the fire.

6. Considering the above being admitted facts, let us examine as to whether there is prima facie case against the petitioner for commission of offence U/S.436 of IPC or for any other offences. For better appreciation, this Court considers it beneficial to refer Section 436 of IPC which is couched in the following words:

“436 of the I.P.C.:- Mischief by fire or explosive substance with intent to destroy house, etc.- Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he

will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

A cursory glance of above definition of Section 436 of the IPC would go to indicate that the offence U/S.436 of IPC has been described by four important factors such as mischief, fire or explosive substance, knowledge and *mens rea* (intention) to destroy the house. A further analysis of offence U/S.436 of IPC, the following ingredients are required to complete the offence:

*“(i) mischief must have been committed by someone,
(ii) such mischief must have been done by fire or explosive substance and
(iii) mischief must be preceded by mens rea or knowledge to destroy the house.”*

7. What constitute the “mischief” has been explained U/S.425 of IPC which states as follows:-

“425 Mischief:- *Whoever with intend to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.*

Explanation 1:- It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or

damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.- Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.”

8. What constitutes the offence of mischief has been defined in Section 425 of IPC which is couched in terms of mental and physical act. The mental element is nothing but the *mens rea* or intention which is again either expressed or implied to cause wrongful loss or damage to the property/person. The physical element is an act of destruction and/or injurious change to the property, while the mental element is the same in all kinds of mischief. Mischief involves a mental/physical act accompanied with a destructive animus, and such destruction is with the object of causing wrongful loss or damage. On the other hand, negligence does not necessarily amount to mischief, but negligence with *mens rea* to cause wrongful loss or damage would amount to mischief in certain circumstances. It is, therefore, very clear that the offence U/S.436 of IPC is referable to mischief by fire/explosive substance accompanied with *mens rea* or knowledge, besides causing destruction of any building ordinarily used as a place of worship or human dwelling or place of custody.

9. Reverting back to examine the pregnability of the impugned order, there appears no doubt that the learned Court by the impugned order has taken cognizance of offence U/S.436 of IPC on a conspectus of materials on record consisting of the protest petition, initial statement, and statement of witnesses U/S.202 of Cr.P.C. Admittedly the complainant has filed protest petition pursuant to the final report “no clue” as submitted by the I.O. after conducting investigation in the FIR lodged in Kisinda P.S. Case No.03 of 2011. It is also not in dispute that the complainant has lodged the FIR and complaint against his four brothers but the learned S.D.J.M., Rairakhol by the impugned order has found prima facie case only against the present petitioner and accordingly, issued process against him. A bare perusal of complaint by itself discloses the only incriminating material against the petitioner that while dwelling house of the complainant was burning, the petitioner had prevented others in presence of witnesses Antaryami Pradhan and Satrugan Roul from dousing the fire set to the house of the complainant and the complainant had suspected that the petitioner and his other three brothers would have set fire to his dwelling house. Admittedly there is neither any averment in the complaint nor is there any material in the initial

statement of the complainant as also in the statement of witnesses U/S.202 of Cr.P.C. as to who had set the house on fire. The case of the complainant is that at the relevant time, his house was on fire, but was the house set on fire by somebody? Or was the same caught with fire accidentally, has not been clarified either in the complaint or in the initial statement or in the enquiry U/S. 202 of Cr.P.C. The only assertion made in the complaint is that the complainant suspects the petitioner and his other three brothers to have set his dwelling house on fire. It is claimed in the complaint that witnesses namely Antaryami Pradhan and Satrugan Roul were found to have seen the petitioner preventing others from extinguishing the fire but they have stated in their enquiry U/S. 202 of Cr.P.C. that Bikram Pradhan was saying why they are extinguishing the fire and both of them have further stated in such enquiry that they cannot say as to who set the house on fire. The son of the complainant and the complainant have also not stated in the proceeding as to who set the house on fire.

10. In order to attract the offence U/S.436 of IPC, at the cost of repetition, it is stated that there must be a mischief by fire and such mischief must have been committed by someone. Neither the complainant nor any of the witnesses have ever stated as to who

set the said dwelling house on fire, but the only allegation made against the petitioner is that he was preventing others from dousing the fire. There cannot be any semblance of doubt that one can prevent others by his own act which can either be verbal or physical but in this case the entire materials on record do not disclose any physical act of the petitioner preventing others. It is albeit stated in the complaint that the petitioner was preventing others in presence of Antaryami Pradhan and Satrugan Roul who have stated in their enquiry that the petitioner was saying why you are extinguishing the fire, but such facts even if accepted being a casual remark does not constitute the act of preventing others. Moreover, the son of the complainant has also been examined in this case but his statement was to the effect that the petitioner said that it was good that their house has been set on fire.

11. A careful consideration of the uncontroverted allegations made in the complaint and appearing in the evidence in the form of initial statement of complainant and enquiry of the witnesses U/S.202 of Cr.P.C. in support of the same do not constitute the commission of any offence and make out a case against the accused-petitioner inasmuch as the ingredients of offence U/S.436 of IPC which comprises (i) mischief by fire or explosive

substance, (ii) commission of such mischief by someone and (iii) lastly, destruction of any building to be a place of worship or human dwelling or place of custody are not conjointly established fully against the petitioner in view of the fact that the allegation of setting the dwelling house on fire has neither been alleged against the petitioner nor was it established against him and the mere allegation of preventing others from dousing the fire although stated in complaint but was never stated by any of the witnesses in the Court, rather there appears some casual remarks stated to be made by the petitioner to others as to “why they are extinguishing the fire” only appears in the statement of witnesses Antaryami Pradhan and Satrugan Roul which *ipso facto* does not attract the offence either U/S.425 of IPC or 436 of IPC. What are the circumstances in which this Court can exercise its inherent jurisdiction U/S.482 or Cr.P.C. has been laid down by the apex Court by way of illustration in the most and oft quoted decision of our Apex Court in ***State of Haryana v. Bhajan Lal; 1992 Supp (1) SCC 335*** wherein at paragraph 102(3) the Apex Court has laid down one of the grounds for exercising power U/S.482 of Cr.P.C. as under:-

“where the uncontroverted allegations made in the FIR or complaint and the evidence collected in

support of the same do not disclose the commission of any offence and make out a case against the accused.”

When the case at hand is scrutinized on the above legal principle laid down by the Apex Court, one thing emerges that the complainant-opposite party no.2 herein could not make out a case against the petitioner for commission of offence U/S.436 of IPC and a close scrutiny of materials in entirety do not disclose the basic ingredients of offence U/S.436 of IPC against the petitioner.

12. In view of the discussion of facts and law made hereinabove and taking into consideration the fact that the material allegations on record even if taken at their face value and accepted in entirety do not prima facie constitute/disclose any offence or make out a case against the petitioner but the learned S.D.J.M., Rairakhol has fallen in error taking cognizance of offence and issuing process against the petitioner by the impugned order, which cannot sustain on a legal scrutiny and impugned order, thereby, is liable to be quashed. This Court, therefore, in exercise of its inherent power set-aside the impugned order by coming to a conclusion that the material allegations on record do not disclose commission of any offence against the petitioner and the complaint deserves to be dismissed.

13. In the result, the CRLMC is allowed and the impugned order is hereby set-aside but in the circumstance without any costs.

(G. Satapathy)
Judge

Orissa High Court, Cuttack,
Dated the 10th of November, 2022/Subhasmita

