

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1878 of 2016

Niranjan Behera

....

Petitioner

Mr. A. Das, Advocate

-Versus-

State of Orissa

....

Opposite Party

Mr. S.N. Das, ASC

CORAM:

JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT: 04.07.2022

1. Instant petition under Section 482 Cr.P.C. is filed by the petitioner assailing the order of cognizance dated 28th October, 2015 (Annexure-1) passed in C.T. Case No.257 of 2014 arising out of Khuntuni P.S. Case No.64 of 2014 passed by the learned S.D.J.M, Athagarh on the grounds inter alia that there is no material on record showing his involvement regarding the seizure of diesel except a confessional statement besides the statement of a seizure witness whose disclosure relates to Khuntuni P.S. Case No. 147 of 2014 and therefore, under the above circumstances, the same is liable to be set aside and so also the criminal proceeding.

2. An FIR was lodged on 18th June, 2014 at Khuntuni P.S. alleging therein that the informant to be the owner of an oil tanker bearing registration No.OR-19-H-5935 which was loaded with diesel of 18000 litres on 17th June, 2014 and proceeded towards Talcher from the oil depot of Jatni but on the way, five unknown miscreants arrived in a car, intercepted it, hijacked the driver and helper and then took control of the vehicle. On the above information, Khuntuni P.S. Case No.64 of 2014 was registered

under Sections 395 and 412 read with 34 IPC and Section 25 of the Arms Act which ultimately led to the filing of charge sheet and taking of cognizance of offences against the accused persons including the petitioner as accused No.4 by the impugned order under Annexure-1 which is currently under challenge.

3. Heard Mr. A. Das, learned counsel for the petitioner and Mr. S.N. Das, learned ASC for the State.

4. It is contended by Mr. Das that during investigation neither the helper nor the driver implicated the petitioner rather alleged the direct involvement of four other accused persons, who again whispered not a single word about him and till the conclusion of investigation, the stolen diesel had not been recovered but on the strength of statement of a seizure witness in connection with Khuntuni P.S. Case No.147 of 2014 and a confessional statement, he has been implicated which is without any basis. It is also contended that seizure of diesel in the other case was shown against the petitioner purposefully to implicate him which is an illegality and therefore, the criminal proceeding is liable to be quashed.

5. Mr. Das, learned ASC, on the other hand, contended that the order of cognizance vide Annexure-1 is justified since some materials were produced before the learned court below which prima facie indicated the involvement of the petitioner and as regards the factual aspects which have been raised, the same may have to be considered and examined during trial. Mr. Das would contend that on the basis of such a claim of the petitioner which can be elicited during trial, the criminal proceeding should not be quashed.

6. 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).

7. As discussed herein above, under the situations described in **Bhajan Lal** case (supra), inherent jurisdiction of the High Courts may be exercised and not otherwise. It is not that while exercising such power under Section 482 Cr.P.C., the Court is to conduct a roving enquiry as to the truthfulness of the allegations in the FIR and for that matter, in the charge sheet, wherein, the final opinion is expressed by the police. In fact, a great amount of caution is required to be observed, while interfering with the investigation or enquiry, as the case may be, while exercising the power under Section 482 Cr.P.C. In **Golconda Linga Swamy** case (supra), jurisdiction by the High Court, as held by the Apex Court, should

be exercised so as to prevent abuse of process of law or to secure the ends of justice.

8. The statement of the seizure witness in Khuntuni P.S. Case No.147 of 2014 I is stated to have been used in implicating the petitioner. Mr. Das contends that the driver and helper of the alleged vehicle did not involve the petitioner, rather, divulged the names of other accused persons, who also never pointed out his involvement. The stolen diesel could not be recovered as per the contention of Mr. Das. The seizure of diesel in Khuntuni P.S. Case No.147 of 2014 is alleged to be the foundation instead. The record is not available to ascertain as to in what manner petitioner's involvement is shown and especially when 25 barrels of diesel were seized but in another case. Mr. Das, while advancing the cause of the petitioner, cited a decision of the M.P. High Court in the case of **Pradeep Vrs. State of M.P.** (CRR No.1789 of 2020 decided on 14th August, 2020) which relates to the recovery in terms of Section 27 of the Indian Evidence Act and dealing with other aspects, whereas, the learned ASC placed reliance on the following decisions, namely, **Haricharan Kurmi and another Vrs. State of Bihar: (1964) 6 SCR 623; Ananta Dixit Vrs. State: (1984) 57 CLT 429; Kalyan Chandra Sarkar Vrs. Rajesh Ranjan @ Pappu Yadav and another: (2004) 7 SCC 528; and Dipakbhai Jagdishchandra Patel Vrs. State of Gujarat and another: (2019) 16 SCC 547** which are in relation to the probative value of a confessional statement of a co-accused for being utilized against another in terms of Section 30 of the Evidence Act. But, in all the above cases, the decisions have been rendered, while disposing of appeals against the orders of conviction. What would be the requirement to accept and prove the recovery of a seized object having reference to the provisions of the Evidence Act and the extent of acceptability of the confession of a co-accused have been

dealt with in the aforesaid citations. There is no quarrel to the position of law regarding the evidentiary value of a confessional statement of a co-accused as envisaged in Section 30 of the Evidence Act which has been elaborately discussed in the judgments cited by the learned ASC. As to the present case, either on a statement of a witness or confessional statement of a co-accused, the petitioner has been implicated. It is admitted by learned ASC Mr. Das that the seizure of diesel relates to Khuntuni P.S. Case No.147 of 2014. After the alleged seizure in the said case and considering the evidence whatever received therein, the involvement of the petitioner has been shown. The Court is completely in dark with regard to the nature of evidence based upon which the petitioner was involved except the fact that there has been a confessional statement besides seizure of diesel in Khuntuni P.S. Case No.147 of 2014. The aforesaid aspects of the case which are fact based are required to be examined afresh considering the claim of the petitioner. But the law is well settled that even a slightest doubt suggesting the complicity of an accused is sufficient to take cognizance of the offence he has committed and also for the purpose of framing charge. Having said that, the Court is of the considered view that it is a fit case where the matter should be remitted back to the court below for examination of all the materials for the limited purpose of taking cognizance of the offence vis-à-vis the petitioner which would perhaps serve the purpose and meet the ends of justice.

9. Accordingly, it is ordered.

10. In the result, petition under Section 482 Cr.P.C. filed by the petitioner stands allowed. As a necessary corollary, the order of cognizance dated 28th October, 2015 under Annexuree-1 passed in C.T. Case No.257 of 2014 arising from Khuntuni P.S. Case No.64

of 2014 by the learned S.D.J.M. Athagarh is hereby set aside. Consequently, the matter is remanded to the court below for a fresh decision on taking cognizance of the offences as against the petitioner on examination of the material evidence collected during investigation and to pass appropriate order within a fortnight from the date of receipt of a copy of the above order keeping in view the settled position of law highlighted upon and discussed herein before.

(R.K. Pattanaik)
Judge



TUDU