

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3089 of 2012

Radha Gobinda Patra & others. Petitioners

*M/s. C. Ananda Rao, S.K. Behera, A.K. Rath,
G.B. Panda, Advocates*

-versus-

State of Odisha & another. Opposite Parties

*Addl. Standing Counsel – For O.P. No.1-State
M/s. B.P. Das, A. Ekka, J.S. Maharana,
Advocates – For O.P. No.2*

**CORAM:
JUSTICE S. PUJAHARI**

**ORDER
23.08.2022**

**Order
No.**

05. **1.** This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) seeking for quashing of the order dated 05.07.2012 passed by the learned S.D.J.M., Gunupur in I.C.C. No.7 of 2012 taking cognizance of the offences under Sections 341, 294, 323, 506/34 of IPC and proceeding against the petitioners.

2. Heard the learned counsel for the petitioners and the learned counsel appearing for the State-Opposite party no.1. None appeared on behalf of the opposite party no.2 to participate in the hearing.

3. As it appears, pursuant to the F.I.R. lodged by the present petitioner no.1 prior to the institution of the present complaint case, there was a police investigation vide Gudari P.S. Case No.11 of 2012 which corresponds to G.R. Case No.65 of 2012 on the file of the learned S.D.J.M., Gunupur against the present opposite party no.2 and his relatives alleging commission of offences under Sections 498-A, 302, 506, 201/34 of IPC read with Section 4 of the D.P. Act. After completion of investigation charge-sheet was filed by the police against the opposite party no.2 and the co-accused persons for the aforesaid offences. In the said case it was alleged, inter-alia, by the Informant-Petitioner no.1 that his daughter, who was given in marriage to the opposite party no.2, was subjected to dowry related

torture and murdered. Vide the present application, it is alleged by the petitioners that as a counter blast to the aforesaid prosecution, the opposite party no.2 filed a false complaint bearing I.C.C. No.7 of 2012 against them on the accusation that the petitioners went to his house on 30.03.2012, abused and assaulted him with life threat. The learned S.D.J.M. after recording the statement of the complainant (opposite party no.2) under Section 200 of Cr.P.C. and the statement of other witnesses in course of enquiry under Section 202 Cr.P.C. took cognizance of the offences under Sections 341, 294, 312, 506/34 of IPC against the petitioners. It is contended by the petitioners that although there is lack of coherence in the statement of the witnesses so examined in the aforesaid complaint case, the learned S.D.J.M. without applying judicial mind and without delving into the veracity of the allegations, passed the impugned order taking cognizance of the offences against the petitioners. They have sought for quashing of the said order hence.

4. In course of hearing, the learned counsel for the petitioners has taken me through the F.I.R. lodged by the petitioner no.1, the complaint filed by the opposite party no.2 and the statements of the complainant and other witnesses recorded in the said I.C.C. case, to contend that there is lack of coherence in the statements of the complainant and his witnesses, and that the complaint case is manifestly tainted with grudge and enmity.

5. On the other hand, the learned counsel appearing for the State submits that since the learned S.D.J.M. on perusal of the materials placed before him has taken a prima-facie view vide the impugned order, this Court should not interfere therewith at this stage of the proceeding.

6. Admittedly, there is already a prosecution against the opposite party no.2 and his family members for the capital offence and other charges against the present opposite party no.2 and his family members. It is no more uncommon now-a-days that with a view to

frustrate a genuine prosecution, counter cases / prosecutions are launched, and keeping that in view, the Courts should exercise due caution while acting upon the counter cases, although at the stage of taking cognizance the scope of the Court regarding scrutiny of the materials is not so wide. At the same time, the Court taking cognizance is not helpless, inasmuch as while conducting enquiry under Section 202 Cr.P.C., the Court can make effort to find out the intrinsic worth of the allegation made against the accused.

7. In the case of ***Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others***, reported in ***(1998) 5 SCC 749***, the Apex Court in paragraph 28 have held as follows:-

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of

the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.”

So also, in the case of ***State of Haryana vrs. Bhajan Lal***, reported in 1992 Supp.(1) SCC 335 their Lordships of the Apex Court have been pleased to illustrate the circumstances under which this Court can interfere with a criminal proceeding at its threshold, by invoking the power under Section 482 of Cr.P.C. One of those circumstances is, where a criminal proceeding appears to be manifestly attended with malafide or is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the High Court can exercise inherent powers to quash the F.I.R. or the proceeding. Having taken note of the facts and circumstances as depicted from the papers on record, this Court finds the complaint case instituted at the instance of the opposite party no.2 to be coming under the said circumstance. Hence, the impugned order of

cognizance as well as the proceeding of the said case needs to be quashed for the interest of justice.

8. In the result, the CRLMC is allowed, and the impugned order of cognizance as well as the proceeding in I.C.C. No.7 of 2012 pending in the court of the S.D.J.M., Gunupur stands quashed qua the petitioners.

9. Urgent certified copy of this order be granted on proper application.

(S.Pujahari)
Judge

MRS

