

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.6212 of 2014

Guru Krushna Das ***Petitioner***
versus-
Nakula Mahanad and another ***Opposite Parties***

CORAM: JUSTICE S. PUJAHARI

ORDER
20.06.2022

Order
No.

- 08.
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 21st November, 2014 passed by the learned S.D.J.M., Nuapada in I.C.C. No.37 of 2014 taking cognizance of the offences under Sections 294 of the I.P.C. read with Section 3(i)(x) of the S.C. & S.T. (PoA).
 3. Heard the learned counsel for the Petitioner and the learned counsel for the State-Opposite Party No.2. No one appears on behalf of the Opposite Party No.1-Complainant.
 4. As it appears, the Petitioner was a post master where the Opposite Party No.1-Complainant was subordinate to him.
 5. The allegation of the prosecution is that the Petitioner stated to have abused the Opposite Party No.1-Complainant in obscene language by taking name of his caste and also extended threat to him. Alleging aforesaid, a report was lodged before the police station which was registered as Nuapada P.S. Case No.169 of 2012. In the said case, after due investigation, the police finds it is a case of mistake of fact.

Thereafter, the Opposite Party No.1 being noticed filed a protest petition wherein the statement of the Opposite Party No.1-Complainant as well as the witnesses were recorded and then the Court passed the impugned order. The same is challenged on the ground that since in the police investigation found that the allegation against the Petitioner is false and concocted, thereafter the court should have been loathed in taking cognizance in the complaint petition, more particularly when the facts on the record indicates that the Opposite Party No.1-Complainant is subordinate staff. Due to the strict disciplinary attitude of the Petitioner, the aforesaid case has been initiated against him falsely. Therefore, this Court in exercise of its inherent power quash the proceeding against him.

6. Needless to say that scheme of the Code is that when F.I.R. is lodged against certain persons alleging certain offences and ultimately if the police did not find any case against any of the accused persons or did not find any offence alleged submits the final form, then as per the law, the police is duty bound to give such an intimation to the Informant or if not, the Court before acceptance such report is required to give a notice to the Informant in this regard and after consideration the protest petition, if any material is produced, pass a necessary order in this regard. Such a power has been given to the Magistrate not to allow any offence go unpunished, if the police, either wantonly or through bona fide error failed to submit a report after investigation regarding commission of an offence or involvement of some perpetrator of the crime or in other words, as a check and balance to the statutory power of the police to investigate a case independently.

7. Taking note of the aforesaid settled position of law, this Court when addressed the material available on record, it appears that prima facie materials available against the Petitioner in the complaint case.

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. Since 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) to challenge the order of cognizance and the proceeding and also it cannot be said that the case against him inherently improbable and also it is not disputed that prima facie case is there in the complaint case, this Court is not inclined to interfere with the impugned order.

11. Accordingly, the CRLMC stands dismissed.

(S. Pujahari)
Judge

DA

