

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3888 of 2012

Dr. Milon Mitra

....

Petitioner

Mr. Dharanidhar Nayak, Senior Advocate

-versus-

State of Orissa and another

....

Opposite Parties

Mr. Ishwar Mohanty, A.S.C.

**CORAM:
THE CHIEF JUSTICE**

ORDER

14.10.2022

Order No.

09. 1. The challenge in the present application is to an order dated 3rd September 2012, passed by the JMFC, Pipili taking cognizance under Sections 341/302/354/506/34 IPC read with Section 3 (1) (x)/3(1)(xi)/3(2)(v)/4 of the SC & ST (PoA) Act against the Petitioner and others.
2. At the outset, it must be mentioned that by an order 20th December 2012, while issuing notice in the present application, the NBW issued against the present Petitioner in G.R. Case No.22 of 2012 was stayed and further proceedings in the said case was also stayed till the next date. That stay vis-à-vis the present Petitioner is continuing till date.
3. In the meanwhile, in S.T. Case No.1/405 of 2014-12 arising out of same G.R. Case No.22 of 2012, the 1st Additional Sessions Judge, Bhubaneswar passed a judgment on 24th December 2018 acquitting the two co-accused. Copy of the said judgment has been produced by the learned Additional Standing Counsel (ASC) for the State.

4. This Court has heard the submissions of Mr. Dharanidhar Nayak, learned Senior Advocate appearing for the Petitioner and Mr. Ishwar Mohanty, learned ASC for the State.

5. Mr. Nayak points out that at the relevant point in time, the Petitioner was working as an Assistant Surgeon in Capital Hospital, Bhubaneswar which is a Government Hospital. The ground on which quashing is sought is that cognizance was taken by the JMFC, Pipili against Petitioner without the sanction of the Government under Section 197 Cr PC. The admitted position is that the Petitioner was indeed a Government servant at the relevant point in time being an Assistant Surgeon in a Government Hospital. Since the alleged offences for which he was charge sheeted were under the SC & ST (PoA) Act, apart from provisions of the IPC, it was mandatory for sanction for prosecution to have been obtained before the trial court took cognizance of the offences. Even till today, no such sanction for prosecution has been granted although ten years have elapsed.

6. In the circumstances, the Court quashes the impugned order dated 3rd September 2012 as well as the aforementioned GR Case No.22 of 2012 and all proceedings consequent thereto *qua* the present Petitioner.

7. The CRLMC is accordingly allowed.

8. Issue urgent certified copy of this order as per rules.

(Dr. S. Muralidhar)
Chief Justice