

ORISSA HIGH COURT: CUTTACK

CRLMC No.1309 of 2015

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

AFR Sabita Parida @ Samal Petitioner

-Versus-

State of Orissa and another Opp. Parties

For Petitioner :Mr. R.N. Rout, Advocate

For Opp. Parties :Mr. S.R. Roul, ASC,[O.P. No. 1]

:Mr. A.K. Panda, Advocate[O.P. No. 2]

P R E S E N T:

HONOURABLE MR. JUSTICE G. SATAPATHY

Date of hearing: 13.10.2022: Date of judgment: 14.11.2022

G.SATAPATHY, J. Assailing the order passed on 12.12.2014
by learned S.D.J.M., Balasore in I.C.C. case No. 1252 of
2014 taking cognizance of offence U/S.500(II) of the I.P.C.
and issuing of process against her, the petitioner has

invoked the jurisdiction of this Court U/S. 482 of Cr.P.C. to quash the aforesaid order.

2. Facts giving rise to the present application may be adumbrated as, the petitioner is the accused and the opposite party no.2 is the complainant in 1.C.C. Case No.1252 of 2014 of the Court of learned S.D.J.M., Balasore. According to the complainant, on 05.09.2012 the accused made false, baseless and motivated allegations against the complainant and O.I.C & A.S.I. of Chandipur Police Station before the Orissa Human Rights Commission, Bhubaneswar (hereinafter referred to as 'O.H.R.C.') by stating in her complaint that on 29.08.2012 at 9 P.M. the complainant along with these two police officers came to her rented house situated at village Bhoisahi P.S. Town Dist-Balasore in inebriated condition and asked for her husband but when they did not find her husband, they molested and attempted to commit rape upon her and at that time, her sister-in-law together with her husband(husband of sister-in-law) arrived at the spot and they saw the aforesaid persons including the complainant fleeing away from the spot. On receipt of her

aforesaid complaint, the O.H.R.C. got the matter enquired into by Superintendent of Police, Balasore and the D.S.P., D.I.B., Balasore submitted his enquiry report after due enquiry stating the allegation to be untrue. However, the Acting Chairperson of O.H.R.C. entrusted the D.S.P. attached to the Commission namely, Smt. Tapaswini Arukh to investigate into the allegation and she submitted her report to the Acting Chairperson of O.H.R.C., Bhubaneswar on 24.03.2014. On receipt of the investigation report, the Acting Chairperson, O.H.R.C., Bhubaneswar ordered for closure of the proceeding on the ground that the allegation are false, imaginary and concocted. According to the complainant, he was examined in his own village Badakia on 09.01.2014 by the D.S.P., O.H.R.C., Bhubaneswar in front of 500 families of his village who mocked at him by obscene remarks by which he considers himself to have been defamed on false, frivolous and concocted allegations made by the accused (petitioner) and as such the accused is liable to the punished U/S.500 of the I.P.C.

On receipt of the complaint with the above allegations, the learned S.D.J.M., Balasore recorded the initial statement of the complainant (O.P. No.2) and conducted enquiry U/S.202 of the Cr.P.C. by examining the witness and on finding sufficient materials, the learned S.D.J.M. Balasore by the order impugned in this case took cognizance of offence U/S.500 of the I.P.C. Hence, the present CRLMC U/S.482 of Cr.P.C.

3. In course of hearing of the CRLMC, Mr. R.N. Rout, learned counsel for the petitioner submits that the impugned order has been passed mechanically without appreciating the fact and there is hardly any prima facie case to connect the petitioner with the offence of alleged defamation. It is further submitted by him that the allegations referred to in the complaint are squarely covered under the 5th, 8th and 9th exception to Section 499 of I.P.C. and thereby, the impugned order giving rise to the present criminal proceeding is liable to be quashed being unsustainable in the eye of law. Learned counsel for the petitioner by placing the statement of complainant-opposite

party no.2 recorded U/S.200 of Cr.P.C. by learned S.D.J.M., Balasore submits that the petitioner is the aunt-in-law of the opposite party no.2 and no where such statement of the complainant refers that his reputation has been lowered in the estimation of general public and the statement of his father recorded U/S.202 of Cr.P.C. would hardly go to reflect commission of any offence of defamation by the petitioner. It is also submitted by him that neither the petitioner had spoken to nor had made any visible representation of any imputation concerning the complainant and whatever is available on record is relating to the allegation made by the accused in good faith about the incident done to her by the complainant with the assistance of two police officers. Learned counsel for the petitioner under aforesaid grounds submits that the continuance of criminal proceeding against the petitioner for defamation is an abuse of process of law as the entire averments on complaint together with the initial statement of the complainant and statement of witness in enquiry would hardly reflect any of the ingredients of Section 499 of

I.P.C. so far as to attract the offence of defamation against the petitioner. It is accordingly prayed on behalf of the petitioner to quash the proceeding in exercise of power U/S.482 of Cr.P.C.

3.1. Mr. A.K. Panda, learned counsel appearing for the opposite party no.2 by taking through the paragraph-9 of the complaint submits that due to the false allegation lodged by accused against the complainant, the D.S.P., O.H.R.C. conducted investigation and examined the complainant before his villagers on the false allegation of molesting and attempting to commit rape upon a woman who is none other than his aunt-in-law and thereby, the reputation of the complainant was lowered on the estimation of the villagers and the petitioner-accused being instrumental in foisting the false allegation lowering the reputation of the complainant has committed the offence of defamation and she is, therefore, liable to be punished there under. It is further submitted that the learned S.D.J.M., Balasore has not committed any illegality by passing the impugned order which was done in the interest of justice

and the present CRLMC being unmerited may kindly be dismissed.

4. In order to appreciate the rival submissions, this Court straight away reverts back to Section 499 of I.P.C. which defines defamation as under:-

“Defamation.- Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.- It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.- It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.- An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.- No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.”

5. What are the most significant factors which are referable to the offence of defamation is the “intention” or “knowledge” with certain exceptions. In this case, the petitioner takes the umbrage of exceptions 5th, 8th and 9th appended to Section 499 of the I.P.C. which defines defamation as an offence except for the exceptions. In the present case, there is no dispute about the petitioner making certain allegations against the opposite party but the complainant-opposite party had not been able to ascribe any unlawful motive or intention of the petitioner behind raising such allegation nor is it the case of the complainant-opposite party that the petitioner by use of any words either spoken or intended to read or by sign or visible representation made or published any imputation concerning the complainant intending to harm his reputation. The complainant-opposite party No.2 in this case has lodged the complaint on the ground that the accusation preferred by the petitioner-accused before O.H.R.C. was untrue, false, baseless and motivated. Further, it is undoubtedly true that the opposite party No.2

as complainant has stated in his initial statement that the petitioner had brought allegations against him and two police officials molesting her and attempting to commit rape upon her which allegations were duly investigated into by one D.S.P. attached to O.H.R.C. office but the initial statement of the complainant never discloses about the allegations raised by the petitioner in the case was a written one or a oral one nor the enquiry report of D.S.P. was produced in the complaint although the complainant stated in his complaint to have applied for certified copy of relevant documents from the O.H.R.C. Bhubaneswar and after perusing those documents, he was satisfied that the conclusion arrived at by O.H.R.C. was genuine and correct. Neither any document of the O.H.R.C. was produced before the learned S.D.J.M., Balasore in the complaint nor was the initial statement of the complainant reveals in whose presence the D.S.P., O.H.R.C. had interrogated him in the matter and what she asked to the complainant. Similarly, the statement of the witness No.1 of the complainant recorded U/S. 202 of Cr.P.C. does not disclose about the

names of persons before whom the D.S.P. interrogated the complainant in the course of investigation into the allegation raised by the petitioner. Moreover, the witness No.1 is none other than the father of the complainant and he has never stated in the enquiry U/S. 202 of the Cr.P.C. about the exact allegations raised by the petitioner-accused against the complainant.

6. In reverting back to the contention advanced for the petitioner, it appears that although the petitioner has taken the refuge of 5th, 8th and 9th exception to Section 499 of IPC, but 5th and 9th exceptions are not applicable to the case at hand, whereas 8th exception appears to be squarely applicable to the case of the petitioner since it states that accusation preferred in good faith to authorized persons who have lawful authority in respect of subject matter of accusation. In this case, if the averments taken in the complaint discloses about petitioner preferring certain accusation against the complainant-O.P. No.2 and two others which was investigated into but closed on account of the same being found untrue. Neither the impugned order

nor the record in complaint discloses about production of any document with regard to closure of the proceeding before the O.H.R.C. on account of the same to be untrue. In absence of any document with regard to closure of the proceeding before the O.H.R.C., it would not be proper to say that the proceeding before O.H.R.C. was closed on account of allegation to be found untrue.

7. Be that as it may, taking cognizance of offence in a criminal complaint is not an empty formality, but a sacrosanct duty cast by law upon a Magistrate who must ensure that criminal prosecution should not be used as a instrument of harassment or a tool for seeking private vendetta or to pressurize the accused with an ulterior motive. It is reminded that Section 190 of Cr.P.C. provides for taking cognizance of offence by Magistrate who upon receiving a complaint of facts constituting any offence may take cognizance of offence. The aforesaid provision of law makes it ample clear, unless the complaint discloses/constitutes the ingredients of offence, Magistrate authorized by law should not take cognizance of offence.

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 significant 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.500 of IPC and a close scrutiny of materials in entirety do not disclose all the basic ingredients of offence U/S.500 of IPC against the petitioner.

8. In ***Auguda Ram Shaha and others Vrs. Nemaichand Shaha; (1896) ILR 23 Cal 867***

(Manu/WB/0132/1896) decided on 29.06.1896, it is observed by a two Judge Bench of High Court of Calcutta then as under:-

“We do not think it possible that a statement may be subject of criminal prosecution for defamation, and at the same time, may be absolutely privileged, as far as the Civil Courts are concerned.”

8.1 In **Manjaya Vrs. Sessa Shetti; (1888) ILR 11 Mad 477**, it was held:-

“the conviction was bad. The statements of witnesses are privileged; if false, the remedy is by indictment for perjury and not for defamation.”

8.2. In **Baboo Gunnessh Dutt Singh Vrs. Mungneeram Chowdhry and others; 11 B.L.R. 321**, it was held:-

“witnesses cannot be sued for damages in respect of evidence given by them in a judicial proceeding. If their evidence be false, they should be proceeded against by an indictment for perjury.”

8.3. In **Woolfun Bibi Vrs. Jesarat Sheikh and others; 1899 ILR 27 Cal 262** it was held as under:-

“It is clear that the statements alleged to be defamatory were made by the accused in the course of their evidence in a Court of justice, for

these statements were relevant to the issue in the case under enquiry. Under these circumstances, upon the authorities cited by the officiating Sessions Judge, we think that the accused cannot be prosecuted for defamation in respect of these statements, and that the conviction and sentence must be set aside, the fine, if paid, to be refunded."

9. Law is very clear, if false or untrue information is given to a public servant, the remedy is available U/S. 182 of the IPC, but it was to be established that the information so given by a person who knows or believes such statement to be false and it was not the case here as the D.S.P., O.H.R.C. has resorted to Section 182 of the IPC. In absence of any complaint in writing by such public servant, no proceeding U/S. 182 of IPC and in this case, neither the D.S.P. nor any body from O.H.R.C. has resorted to Section 182 of IPC, which in the circumstance gives rise to a presumption in favour of the petitioner who had raised certain allegation against the O.P. No.2 and two police officials. Nor was it disclosed by O.P. No.2 with some reliable materials/documents why the proceeding before was closed.

10. In view of the discussions made hereinabove, together with the analysis of law and facts as well as the principle laid down in the decisions referred to above and keeping in view the 8th exception to Section 499 of IPC which appears to be quite applicable to the case of the petitioner, this Court does not find any justification for proceeding against the petitioner for criminal defamation, but the learned S.D.J.M., Balasore has misread the law and took cognizance of offence of defamation and issued process against the petitioner without advertting to the facts and evidence of the case in proper perspective as the same do not make out a case against the petitioner for defamation.

11. In the aforesaid situation, especially when on careful conspectus of materials placed on record hardly disclose/constitute the basic ingredients of the offence of criminal defamation and the criminal proceeding against the petitioner, therefore, is nothing but an abuse of process of Court. In the above premises, exposing the petitioner to the rigmarole and ordeal of a criminal trial would be an

onslaught to her right to seek justice. Hence, in the circumstance, the impugned order is unsustainable in the eye of law and further continuance of the criminal proceeding thereon would be an abuse of process of Court. Thus, to secure ends of justice, the impugned order and further continuation criminal proceeding thereon deserve to be quashed and, therefore, the impugned order taking cognizance of offence U/S. 500 of the IPC together with issuance of process against the petitioner is hereby quashed. As a necessary corollary, the criminal prosecution against the petitioner arising out of the impugned order is dropped.

12. Resultantly, the CRLMC is allowed on contest but in the circumstance without any order as to costs.

.....
G.SATAPATHY,
JUDGE

Orissa High Court, Cuttack
The 14th November, 2022, Kishore

