

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2993 of 2012

Dr. Paresh Kumar Pattanaik

Petitioner

M/s. Banoja Ku. Pattanaik. Advocate

-Versus-

State of Odisha and others

.... Opposite Parties

Mr. A.P. Das, ASC

Mr. S.C. Mohapatra, Advocate for O.P. No.2

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

20.05.2022

Order
No.

- 04.
1. Heard learned counsel for the petitioner and learned counsel for the State.
 2. Instant application under Section 482 Cr.P.C. is filed by the petitioner challenging the order of cognizance dated 13th January, 2006 (Annexure-5) passed in G.R. Case No.320 of 2005 by the learned S.D.J.M., Khurda which corresponds to Khurda P.S. Case No.117(21) of 2005 and also to quash the entire proceeding on the grounds stated therein.
 3. Learned counsel for the petitioner submits that the petitioner is more than 70 years old and at the time of alleged occurrence, he was on duty and therefore, the learned court below ought to have asked for sanction in terms of Section 197 Cr.P.C. before taking cognizance of offences punishable under Section(s) 341, 323 and 294 IPC pursuant to the filing the charge sheet dated 30th June, 2005 and

therefore, the order of cognizance dated 13th January, 2006 is illegal and bad in law.

4. Learned counsel for the State, on the other hand, submits that the petitioner has filed a counter case, which resulted in submission of charge sheet against the complainant under Section(s) 341, 353 and 294 IPC and in so far as the allegation against the petitioner is concerned, he stated to have demanded bribe of Rs.5000/- from the complainant. It is further contended that considering the nature of allegation against the petitioner, the question of sanction under Section 197 Cr.P.C. if at all arises, may be raised during the trial.

5. The FIR was lodged against the petitioner in the year 2005 with regard to the alleged incident dated 15th April, 2005, which led to the filing of charge sheet and passing order of cognizance dated 13th January, 2006. The contention is that there was no sanction under Section 197 Cr.P.C. which is obtained before a public servant being prosecuted which is objected to by learned counsel for the State on the ground that it can when be adjudicated upon and examined by the learned court below.

6. Admittedly, the petitioner was a public servant by the time of the alleged incident and at the relevant point of time, the petitioner was stated to be on duty. However, the allegation which is made against him is to the effect that he illegally demanded Rs.5000/- from the complainant. It is settled position of law that a public servant, if commits any excess while performing duty or discharging official function, he shall have immunity from being criminal prosecuted for which sanction under Section 197 Cr.P.C. shall have to be obtained. Furthermore, the allegation made against public servant must appear to be integrally connected with his official duty and only then, a

protection Section 197 Cr.P.C. would be available. In the case at hand, the allegation is that petitioner demanded bribe of Rs.5000/-. In view of such an allegation, it cannot be said that the demand was in any way part of official function or duty of the petitioner. No doubt, the truthfulness or otherwise of the allegation regarding bribe of Rs.5000/- would have to be ascertained in course of trial.

7. With the above conclusion, the Court is not inclined to interfere with the order of cognizance dated 13th January, 2006 passed under Annexure-5 by the learned court below in G.R. Case No.320 of 2005. Nevertheless, the petitioner is at liberty to raise the question of sanction required under Section 197 Cr.P.C. during the trial, which, in the event of being agitated, shall be examined by the learned court below and dealt with as per and in accordance with law.

8. In the result, the CRLMC stands dismissed.

(R.K. Pattanaik)
Judge