

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1323 of 2022

AFR

Ranjubala Sahu and Others

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Petitioners

Mr. Devashis Panda, Advocate

-Versus-

State of Odisha and Another

....

Opposite Parties

Mr. Tapas Kumar Praharaj, SC for O.P.No.1

Mr. Anjan Kumar Sahoo, Advocate for O.P.No.2

CORAM:
JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT:18.10.2022

1. Petitioners have challenged the order of cognizance dated 4th April, 2022 passed in ICC Case No.51 of 2021 by the learned S.D.J.M. Hindol on the grounds *inter alia* that a false complaint has been filed with a malicious intention at the instance of the complainant, namely, opposite party No.2 and that apart, the contents of the complaint do not disclose commission of any cognizable offence and therefore, it is not tenable in law and hence, liable to be quashed.

2. In fact, opposite party No.2 is the husband of petitioner No.1 and brother-in-law of petitioner Nos.2 and 3.

3. Opposite party No.2 lodged an FIR later to which Balimi P.S. Case No.136 dated 21st July, 2021 was registered under Sections 341, 417 and 506 read with 34 IPC. In that FIR, opposite party No.2 made allegations against the petitioners and in particular, petitioner No.1. Thereafter investigation was commenced by the local police but ultimately, it resulted in submission of a final report

due to want of sufficient evidence. Subsequent to the receipt of final report, opposite party No.2 filed a protest petition treated as complaint, whereupon, the learned S.D.J.M., Hindol proceeded and ultimately took cognizance of the offences under Sections 341, 363, 427 and 506 read with 34 IPC against the petitioners which is currently under challenge.

4. The opposite party No.2 leveled allegations against the petitioners and particularly petitioner No.1 which are related to the incidents having taken place during his meeting with their minor son, details of which have been narrated in the complaint, a copy of which is at Annexure-3. The learned court below received evidence in affidavit from opposite party No.2 and thereafter proceeded to take cognizance of the alleged offences on a satisfaction that there is sufficient material against the petitioners and then passed the impugned order under Annexure-1.

5. Heard Mr. Devashis Panda, learned counsel for the petitioners, Mr. T.K. Praharaj, learned SC for the State and opposite party No.2, namely, Mr. Anjan Kumar Sahoo in person.

6. Mr. Panda, learned counsel for the petitioners submits that no prima facie case is made out and considering the allegations in the complaint, no cognizable offence can be said to have been committed by the petitioners. While claiming so, Mr. Panda drew the attention of the Court to the series of events narrated by opposite party No.2 in the complaint. It is further submitted that on a report being lodged by opposite party No.2, a case was registered and investigation was conducted but due to insufficient evidence, a final report was submitted and despite having no material, the learned court below took cognizance of the offences against the petitioners on the complaint received as a protest petition and therefore, the same cannot be sustained in law. It is

contended by Mr. Panda that a criminal proceeding can be quashed, if it is maliciously instituted with an ulterior motive for wrecking vengeance or out of personal grudge which is found to exist between the parties in the present case and more particularly inter se petitioner No.1 and opposite party No.2. Referring to the decision of the Supreme Court in **State of Haryana and others Vrs. Ch.Bhajanlal and others** reported in 1993 Supp.(1) SCC 335, it is finally contended by Mr. Panda that the case in hand is of such nature which has to be held as manifestly attended with malafide borne out of personal grudge and hence, liable to be quashed, which is one of the categories of cases, where inherent jurisdiction under Section 482 Cr.P.C. is exercisable either to prevent abuse of process of court or otherwise to secure ends of justice.

7. Mr.Praharaj, learned SC on the other hand justifies the impugned order under Annexure-1 which is based on the complaint filed by opposite party No.2 and on receiving evidence from him by the learned court below.

8. Opposite party No.2 also justified the order of cognizance dated 4th April, 2022 and vehemently challenged the contention of the petitioners. It has been alleged by opposite party No.2 that petitioner No.1 has spoiled his life so also petitioner Nos.2 and 3, who are the brothers-in-law and described the events and the circumstances under which he was compelled to file the complaint. According to opposite party No.2, his wife, namely, petitioner No.1 is guilty of absconding with their child to Port Blair, Andaman which was designed to prevent him from meeting his son. Narrating the incidents and the mischief and misconduct of the petitioners with a purpose and intention to defeat the interim order of the civil court, opposite party No.2 contended that the learned S.D.J.M. Hindol has rightly taken cognizance of the offences and therefore, the impugned order under Annexure-1 need

not be disturbed. In fact, opposite party No.2 has filed an objection justifying the course of action of the learned court below.

9. As it is made to understand in Mat Case No.148 of 2019, the learned Civil Judge (S.D.), Athagarh passed an interim order dated 4th March, 2021 with a visitation right in favour of opposite party No.2 vis-à-vis their son, who is currently in the custody of petitioner No.1 and staying with her at Port Blair, Andaman. From the complaint, it is also made to realize that on couple of occasions, the child was taken to meet opposite party No.2 and according to the latter, the environment was hostile and during one of such occasions, petitioner No.3 misbehaved him. It is claimed by opposite party No.2 that when such visitation was fixed on 25th April, 2021, he was informed that petitioner No.1 had already left for Port Blair, Andaman, a day before to join her duty at the named Institute where she is posted as a faculty member. The entire episode revolves round the custody of the child in respect of whom an interim visitation right was allowed in favour of opposite party No.2 by the civil court and in that connection, at the time of meetings, incidents happened which led to the lodging of the FIR and thereafter the complaint against the petitioners. It is made to suggest that opposite party No.2 approached the civil court in Mat Case No.148 of 2019 seeking custody of the child by initiating an action under the provisions of the Guardians and Wards Act, 1890 and also to appoint him as the guardian of their minor son, wherein, initially a visitation right was allowed but finally, the proceeding was disposed of and dismissed by a judgment dated 28th December, 2021 even denying such right.

10. It is not disputed that a final report was submitted against the FIR lodged by opposite party No.2, who then filed the complaint leading to the passing of cognizance order under Annexure-1 by the

learned court below. The question is, whether, in the peculiar facts and circumstance of the case, the impugned order of cognizance under Annexure-1 can be sustained in law? Whether a case is really made out for exercising inherent jurisdiction under Section 482 Cr.P.C. in the present case?

11. The position of law is well settled which has been enunciated by the Apex Court in the decision of **Ch.Bhanjanlal** (supra) which is with regard to the circumstances under which inherent jurisdiction could be exercised. In fact, guidelines with illustrations have been set out in the aforesaid decisions which are to be followed before quashing criminal proceedings exercising jurisdiction under Section 482 Cr.P.C. It would be apposite to make a mention, the categories of cases illustratively indicated in the said judgment and the same are stated hereunder:

“8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guide for myriad kinds of cases wherein such power should be exercised:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) 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;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with malafide and/or where the proceeding 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.”

12. According to opposite party No.2, the petitioners are liable for wrongfully confining his minor son and keeping him in the custody of petitioner No.1 under compulsion and for having committed mischief at the time of visitation which was allowed by the civil court by an interim order dated 4th March, 2021. It has also been alleged by opposite party No.2 that he was abused by petitioner No.3 during an incident dated 21st March, 2021 which was at the time of meeting the child. Whether, in the facts and circumstances of the case, it was right and justified for the learned court below to take cognizance of the offences on the complaint filed opposite party No.2?

13. If at all the child in the custody of mother, namely, petitioner No.1 be said to have been wrongly confined? According to opposite party No.2, the minor child has been in the custody of petitioner No.1 under compelling circumstances. In the instant case, opposite party No.2 was denied the guardianship of the child as the proceeding in Mat No.148 of 2019 ended in dismissal. No any visitation right was also allowed in favour of opposite party No.2 which is revealed from Annexure-4. Against the aforesaid backdrop, whether, it would be justified to allege that the child is or has been wrongfully confined by petitioner No.1, who is none other than his biological mother. As per the legal literature, a child below age of seven years is allowed to remain in custody of the mother unless until circumstances demand it otherwise. Again it does not necessarily mean that a child above seven years must necessarily have to be in the custody of father guardian. As to who shall be the custodian of the child irrespective of his age is dependent on the interest of the child which is the paramount consideration. It varies from case to case where custody rights may differ. In the case at hand, such right has been denied to opposite party No.2 which is evident from Annexure-4. In the above background of facts, if the minor child is in the company of petitioner No.1 with whom he has been brought up and having his education till now, it would not be justified to claim that such custody amounts to wrongful confinement. In the similar vein, it would be improper to allege that the child was kidnapped by mother guardian and has been taken to Port Blair, Andaman away from the sight of opposite party No.2. Likewise, petitioner No.1 cannot be alleged of cheating for taking the minor son with her to Andaman with or without the consent or knowledge of opposite party No.2. If at all any such right of opposite party No.2 is affected or infringed upon with regard to custody of the child, he has the liberty to take recourse to law especially after disposal of

Mat Case No.148 of 2019 but he cannot be allowed to allege that petitioners are guilty of wrongful confinement and kidnapping of the child so also for having cheated him. In respect of incidents which dates back to the month of March, 2021 and thereafter and till May, 2021 allegedly taking place during visitation of the child, opposite party No.2 being aggrieved of, appears to have lodged the FIR in the month of June, 2021. But considering the allegations brought on to record, it would not be unfair to conclude that the criminal action was outcome of the marital dispute between petitioner No.1 and opposite party No.2. The allegations primarily centre round the custody battle between the spouses. It may not as well be incorrect to hold that in order to settle score with petitioner No.1, the FIR was lodged and thereafter, complaint was filed by opposite party No.2 when the investigation did not yield any result in his favour. One may even be persuaded to hold that the criminal action at the behest of opposite party No.2 is manifestly attended with malafide or with an ulterior motive for wrecking vengeance or private and personal grudge. Rightly, therefore, it has been contended by Mr. Panda, learned counsel for the petitioners that the criminal action cannot be entertained on the insistence of opposite party No.2. In fact, in **Ch.Bhajanlal** (supra), criminal action which is attended with malafide or maliciousness with a purpose to wreck vengeance or personal grudge is one of the categories of cases where it has been held and observed that inherent jurisdiction is required to be exercised. In the instant case, the dispute between the parties, such as, petitioner No.1 and opposite party No.2 is predominantly related to a custody dispute vis-à-vis their minor child and for that even by considering the facts alleged in the complaint accepted in its entirety, in the humble opinion of the Court, it would not be incorrect to arrive at a decision that the criminal action is entirely based on strained relationship between the estranged spouses and

entirely borne out of private and personal grudge. Having regard to the settled position of law as laid down by the Supreme Court in **Ch.Bhajanlal** case, the Court finally reaches at an inescapable conclusion that the complaint with the nature of allegations cannot be the basis or foundation to criminally prosecute the petitioners.

14. Accordingly, it is ordered.

15. In the result, the petition stands allowed. As a necessary corollary, order of cognizance dated 4th April, 2022 under Annexure-1 and the criminal proceeding in connection with ICC Case No.51 of 2021 pending in the file of the learned S.D.J.M., Hindol is hereby quashed.

(R.K. Pattanaik)
Judge

TUDU