

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1678 of 2017

Sarat Kumar Nanda and Another ..... Petitioners  
Mr. D.P. Dhal, Senior Advocate

-Versus-

Smt. Dhani Samal ..... Opposite Party  
None

CORAM:  
MR. JUSTICE R.K. PATTANAİK

ORDER  
12.12.2022

Order No.

10. 1. A.D. received back from opposite party after valid service of notice. Hence, notice against opposite party is held sufficient.
2. Heard learned counsel for the petitioner.
3. Instant petition under Section 482 Cr.P.C. is filed by the petitioners for quashing of the impugned order dated 23<sup>rd</sup> December, 2016 passed by the learned District and Sessions Judge, Khurda, Bhubaneswar in ICC Case No.15 of 2016 whereby learned court below took cognizance of the offences under Sections 506, 379, 452, 354, 294, 324, 34 of IPC read with Section 3 of SC&ST (PoA) Act.
4. Perused the copy of the FIR as at Annexure-2.
5. Learned counsel for the petitioners submits that for the self-same incident, the opposite party filed a complaint (Annexure-1) and also an FIR vide Dhauli P.S. Case No.14 of 2016, a copy of which is at Annexure-2, in which ultimately, a final report was

submitted. It is further contended that the opposite party then filed the complaint which was not a protest petition, post-submission of final report, however, the same was entertained by the court below and thereafter, the impugned order under Annexure-3 was passed, which is not tenable in law. The learned counsel for the petitioners would contend that with false allegations the complaint was filed which is evident from Annexure-4, a copy of the order dated 4<sup>th</sup> February, 2016 passed in G.R. Case No.1483 of 2008.

6. But then, the court is of the considered view that it is purely based on facts and needs proper examination of the learned court below. It cannot be a ground to quash the proceeding, the plea of alibi which has to be examined during and in course of enquiry and trial.

7. At this juncture, learned counsel for the petitioners submits that since the Court is not inclined to interfere in the matter since the plea of alibi is not believed, at least the petitioners should be directed to surrender and released on bail before the learned court below on any such terms and conditions as imposed.

8. Considering the limited prayer of learned counsel for the petitioners, this Court directs the petitioners to surrender before the learned District and Sessions Judge, Khurda in 1CC Case No.15 of 2016 and raise all such grounds including the plea of alibi at the time of framing of charge which shall be considered by the learned court in accordance with law.

9. Accordingly, it is ordered.

10. Consequently, the CRLMC stands disposed of with a liberty granted to the petitioners to raise any such grounds as are available to them in law at the time of framing of charge and in such eventuality the learned District and Sessions Judge, Khurda, Bhubaneswar shall consider the same in connection with 1CC Case

No.15 of 2016 and pass appropriate orders thereon. Furthermore, the petitioners are directed to appear before the learned court below on the date fixed and in the event they appear, the court shall release them on bail subject to conditions as would be deemed fit and proper in the facts and circumstances of the case.

11. Issue urgent certified copy of this order on proper application.

(R.K. Pattanaik)  
Judge

U.K.Sahoo

