

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1939 of 2018

Rashmi Ranjan Dash

....

Petitioner

-versus-

State of Orissa

....

Opposite Party

CORAM: JUSTICE S. PUJAHARI

ORDER

29.03.2022

Order

No.

11.

1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order of cognizance dated 21st March, 2017 passed by the learned S.D.J.M.(S), Baripada in G.R. Case No.682 of 2016, arising out of CID, CB, Odisha Cuttack Case No.08 of 2016.
3. Heard Mr. Partha Sarathi Nayak, learned counsel appearing for the Petitioner and Mr. S. Mohapatra, learned Additional Standing Counsel appearing for the Opposite Party-State.
4. The Petitioner being the investigator of Morada P.S. Case No.36 of 2012 wherein he stated to have investigated a murder case and filed charge sheet against one Sukadev Naik and Sudam Si, who are respectively husband and brother of Lily Naik for committing murder of Lily Naik.

5. The allegation of the prosecution is that in the aforesaid case Sukadev Naik was having a strain relationship with his wife Lily Naik inasmuch as she was allegedly having extra marital relationship with another, for that, there was frequent quarrel between them and allegedly Sukadev Naik assaulting her frequently. One day Lily Naik left the husband of Sukadev Naik without giving intimation to anyone. Sukadev Naik searched for her, but when could not trace her, he filed a missing report which was entered vide Morada Police Station vide SDE No.44 dated 18.05.2012. Four days following the aforesaid report, a dead body was recovered from a well which is known as Anganwadi well of Village-Dhadasahi. Seeing the dead body, the Gram Rakhi and other identified the same to be the dead body of Lily Naik, as such, Gram Rakhi came to the police station and lodged a report indicating therein that he suspected that Lily Naik has been murdered by her husband due to their strains marital relationship and her dead body has been thrown in the well. Pursuant to the same, the aforesaid report was registered vide aforesaid P.S. Case for the offence under Section 302 and 201 of I.P.C. and police suspecting the Sukadev Naik to be the perpetrator of the crime took him to custody and while in the police custody, Sukadev Naik stated to have given a confession that he has done his wife to death and threw the dead body with the help of his brother-in-law Sudam Si, who is the brother of the Lily Naik in the said well to wipe out the evidence. When the dead body was recovered and inquest report was prepared in the presence of the Executive

Magistrate wherein looking into the bangle as well as nose pin, the relation of the deceased such as her father and uncle identified the same to be that of Lily Naik. In the post mortem report, it also came out that it was a case of homicidal. Thereafter, the aforesaid two persons were forwarded to the court and remanded to custody and also charge sheet was filed against them and consequently, they were facing the trial. The father of Lily Naik then came to know that Lily Naik has eloped with her paramour and staying in Calcutta and, as such, he requested Lily Naik by telephone to come back as his brother and husband are behind the bar for murdering her. Consequently, Lily Naik came and appeared before the court. The said case as such was closed. Subsequent to the aforesaid, a missing report was also lodged by one Krushna Dhungia on 24th February, 2015 that his sister Mandakini Dhungia had been done to death and the dead body belongs to her sister. Thereafter, the D.N.A. examination was done and it was found that the same to be the dead body of sister of Krushna Dhungia, as such, Morada P.S. Case No.11 of 2015. The case was also investigated and ultimately that was reported to be a mistake of fact because no evidence come to light that Mandakini Dhungia has been done to death. After the aforesaid, Crime Branch registered a suo motu case against the Petitioner for dereliction of his duty and also illegal detention and filing challan against two persons in a murder case without any due evidence. The said case was investigated and after collection of evidence, the Petitioner was charge sheeted for committed offence under

Sections 342, 344 and 348 of I.P.C. with the sanction under Section 197 of Cr.P.C. and the learned S.D.J.M.(S), Baripada after perusing the F.I.R. and other connected police papers take cognizance vide order dated 21st March, 2017.

6. The Petitioner seeks quashment of the same on the ground that while he was discharging of his official duty, he bonafidely having conducted the investigation, no sanction should have been accorded for proceeding against him by the authority, as no case was made out against him. Furthermore, it is also submitted that even if sanction has been granted and no case being made out against him in any manner, the court could not have taken cognizance. So also in addition, he submits that in the meanwhile, he having faced a departmental proceeding for the self-same fact and have been exonerated vide D.P. No.4 dated 25th April, 2015 on merit, the criminal prosecution against him for the self-same cause is not sustainable in view of the law laid down in the case of ***Radheshyam Kejriwal vs. State of West Bengal and Another, (2011) 3 SCC 581*** wherein the Apex Court at Paragraphs-38 and 39 have held as follows:-.

“38. The ratio which can be culled out from these decisions can broadly be stated as follows:

- (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;*
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;*
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;*

(iv) *The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;*

(v) *Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;*

(vi) *The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and*

(vii) *In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.*

39. *In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court”*

7. Learned counsel for the State submits that the Petitioner manipulating the evidence on record and by forcibly extracting a confession from the accused, filed charge sheet against him without sufficient material on record, as such, it cannot be said that he had bonafidely exercise his jurisdiction in discharging of his official duty and charge sheeted the accused persons. Therefore, the exercise of the jurisdiction vested on him by the

Petitioner to investigate a case having not been properly exercised with due care and caution, for which, two persons remained behind the bar, the ingredients of the offences are squarely attracted. The authority looking into the same and considering all the relevant materials when granted sanction to prosecute him and thereafter he has been charge sheeted, the contention of the Petitioner that no offence is made out against him and, as such, sanction could not have been granted and, as such, he could not have been proceeded in the aforesaid case, is without any substance. Accordingly, this Court should be loathed in interfering with the order of cognizance. However, it is not disputed that the Petitioner in the meanwhile has been exonerated in a departmental proceeding initiated against him for exercise of his power vested with material irregularity and on the self-same fact on merit, but submits that the criminal case and the departmental proceeding being independent to each other, the same cannot be a ground for quashment of the cognizance against the Petitioner.

8. In rejoinder, Mr. P.K. Nayak, learned counsel for the Petitioner submits that no material whatsoever was produced before this Court showing the fact that the Petitioner had any reason to falsely implicated the accused persons and see them behind the bar and he having bonafidely exercise of his jurisdiction vested on him under the Code of Criminal Procedure investigated the matter and on receipt of the post mortem report indicating that the death was homicidal and the

dead body was identified by the relation of the deceased, coupled with the confession of the accused and also the other incriminating materials, he having submitted the charge sheet and the court taking into consideration such materials on record having applied its judicial mind took cognizance and proceeded against the accused charge sheeted, the Petitioner as such cannot be made liable for illegal detention of the accused persons, moreso when under the law he was authorized to do so, even if while performing his official duty there was any dereliction.

9. In the surrejoinder, it is fairly submitted by the learned counsel for the State that no material has been collected against the Petitioner in this case showing the fact that the Petitioner had any reason to falsely implicate the accused persons in Morada P.S. Case No. 36 of 2012 and to sent them behind the bar by taking them to custody in a false case.

10. Considering the aforesaid facts and submissions made, especially the fact that the Petitioner in bonafidely exercise of his jurisdiction vested on him under the statute and basing on the evidence available that when filed charge sheet against the accused persons, even though subsequently it was found that the deceased was found to be alive, as such, charge sheet filed by him was having no force, in the considered opinion of the Court that no sanction could have been granted inasmuch as that frustrate the very purpose of Section 197 of Cr.P.C. to

protect the officials, who during the course of their discharge of their official duty stated to have committed any offence which has a nexus to the discharge for their official duty. So also Section 79 of the I.P.C. speaks that nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it. Otherwise in the meanwhile, it is not disputed that with the self-same cause, departmental proceeding having been initiated and the Petitioner in the said case having been exonerated on merit and the standard person of prove therein being preponderance of probabilities where the Petitioner had already been exonerated in the departmental proceeding, continuance of the criminal prosecution against the Petitioner for the same is a futile exercise. As such, the criminal prosecution against the Petitioner is also liable to be quashed in view of the law laid down by the Apex Court in the case of *Radheshyam Kejriwal* (supra), which has been reiterated by the Apex Court in the case of *Ashoo Surendranath Tewari -Vrs.- Deputy Superintendent of Police, EOW, CBI & Another, reported in (2020) 9 SCC 636*.

11. Therefore, for the forgoing reasons, this Court allows this Criminal Misc. Case and the impugned order of cognizance as well as criminal proceeding initiated against the Petitioners vide G.R. Case No.682 of 2016 pending in the Court of S.D.J.M.(S), Baripada stands quashed. The learned

S.D.J.M.(S), Baripada or the Court in seisin over the matter shall on receipt of the copy of this order/production of the copy of this order, do the needful in this regard.

12. Urgent certified copy of this order be granted on proper application.

(S. Pujahari)
Judge

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