

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.5594 of 2015

Susanta Kumar Sahoo & others. ***Petitioners***

M/s. S.P. Dash, S.K. Dash,
P.C. Mohanty, Advocates

-versus-

State of Odisha & another. ***Opposite Parties***
Mr. Sk. Zafarulla, Addl. Standing Counsel

**CORAM:
JUSTICE S. PUJAHARI**

ORDER
06.05.2022

Order
No.

04. **1.** This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 seeking for quashing of the order dated 06.11.2015 passed by the learned JMFC, Soro in I.C.C. No.181 of 2015 vide which cognizance has been taken of the offences under Sections 498-A, 302, 304-B read with Section 34 of IPC against the accused-petitioners.
- 2.** Heard the learned counsel for both the sides and perused the relevant papers on record.

3. As it appears, for the selfsame incident, initially there was a police case bearing Khairra P.S. Case No.164 dated 16.11.2009 giving rise to C.T. Case No.605 of 2009 in which vide the order dated 06.08.2010 the learned JMFC, Soro took cognizance of offence under Sections 498-A, 406/34 of IPC read with Section 4 of the D.P. Act against the present petitioner nos.1 to 3. Subsequently, the Informant filed a complaint registered as I.C.C. No.181 of 2015 before the same learned Magistrate for the same alleged incident, and the learned Magistrate on having proceeded therewith under Chapter-XV of the Cr.P.C. passed the impugned order dated 06.11.2015 taking cognizance of offence under Sections 498-A, 302, 304-B/34 of IPC against all the present petitioners directing them to be produced against. To put in other words, the petitioner nos.1 to 3 have been subjected to two proceedings, one in C.T. Case No.605 of 2009 instituted upon police report and the other in I.C.C. No.181 of 2015 instituted upon private complaint for the selfsame incident, and the petitioner nos.4 to 6 who were not arraigned as accused

in the police case were brought within the prosecution through private complaint.

4. It is the submission of the learned counsel for the petitioners that the allegation brought against the petitioner nos.4 to 6 though the complaint is afterthought, inasmuch as they were not implicated in police case, and that for the selfsame incident the petitioner nos.1 to 3 can not be subjected to double prosecution leading to double jeopardy. According to him, the learned JMFC erred not only in procedural law but also committed gross illegality in passing the impugned order in the complaint case.

5. On the other hand, the learned counsel appearing for the State, however, submits that the impugned order being based upon the materials produced by the complainant in the proceeding under Chapter-XV of the Cr.P.C., no fault can be found therein.

6. I have gone through the materials produced by the complainant in course of the enquiry conducted by

the learned Magistrate under Section 202 of Cr.P.C. in I.C.C. No.181 of 2015. The petitioner nos.1 to 3 are common to both the police case and the complaint case and the offence under Section 498-A of IPC has been taken cognizance of in both the cases. The other offences, however, are distinct. But, cognizance is taken of the offences, but not of the offender and which accused has committed what offence, can be dealt with at the time of trial. Having regard to the materials available prima-facie, the impugned order does not warrant any interference in other respects, inasmuch as at the stage of cognizance no threadbare analysis of the materials produced by the prosecution / complainant is called for.

7. Accordingly, the CRLMC is disposed of with a direction that both the cases be clubbed together and tried as mandated in Section 210(2) of Cr.P.C. However, liberty is given to the petitioners to raise all the contentions as to whether any particular offence is made against them or not at the time of charge. The Court then shall decide the same without being

influenced by this order. Furthermore, it is made clear that if the police case wherein the accused-petitioners is proceeded, has already been disposed of and they are proceeded in this case, option is also available to them to raise the question of *Autrefois acquit and Autrefois convict*, as the case may be and in that event, the Court shall address the same in proper perspective.

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

(S.Pujahari)
Judge

MRS

