

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1922 of 2019

Nirmal Chandra Panigrahi

....

Petitioner

Mr. B. Seth, Advocate

-Versus-

A. Pratap Chandra Rao

....

Opposite Party

None

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

16.11.2022

Order
No.

16.

1. Heard learned counsel for the petitioner. Learned counsel for the opposite party is absent on call.
2. Instant petition under Section 482 Cr.P.C. at the behest of the petitioner for quashing of the criminal proceeding and issuance of process in 1C.C. Case No.09 of 2016 pending in the file of learned S.D.J.M., Gunupur on the ground *inter alia* that it is not sustainable in law for the reason that there was no sanction demanded in terms of Section 197 Cr.P.C. as the petitioner was performing official duty at the time of alleged incident for which the complaint was filed by the opposite party.
3. A copy of the complaint is at Annexure-1 and the same is perused by the Court.
4. The impugned order is at Annexure-1, whereby, the learned S.D.J.M., Gunupur in 1CC Case No.9 of 2016 took cognizance of the offences under Sections 379, 341, 294, 506 read with 34 IPC

and issued summons to the petitioner fixing the date to 8th March, 2019.

5. Learned counsel for the petitioner submits that the petitioner is a Government servant and at the relevant point of time, he was on duty and had intercepted the complainant who was riding a two-wheeler with wearing helmet and in that connection, there was exchange of hot words and according to the complainant, the petitioner allegedly abused him in filthy language and committed other overt acts described therein. Under the above circumstances, learned counsel for the petitioner submits that since the petitioner were on duty and discharging the responsibility in official capacity, the learned court below could not have taken cognizance of the offences without any sanction obtained in terms of Section 197 Cr.P.C. which is a statutorily mandate.

6. On a bare reading of the complaint i.e. Annexure-1, the Court finds that the opposite party was intercepted at the spot while travelling in a scooter and it was detained by the petitioner another official, who were in police uniform and that point of time, the alleged incident happened. According to the opposite party, the petitioners took away the key of the vehicle forcibly without issuing a memo or carrying out any seizure in respect of the vehicle which was protested during and in course of the incident but he was abused.

7. Even assuming for the sake of argument that the incident is true and that the petitioner did commit some excess but then as it is made to appear on a reading of Annexure-1 that he was on official duty on 10th August, 2016 and that point of time had stopped the

vehicle of opposite party. The opposite party admitted the fact that the petitioner was in uniform obviously on duty but then the allegation is that without any justification, the key of the vehicle was taken away by him and the other police official and there was a demand to return it but he was allegedly abused.

8. Considering the facts alleged in Annexure-1 and the circumstances under which the incident happened which led to the filing of the complaint in ICC No.9 of 2016, it is clear and conspicuous that the petitioner was on official duty at the relevant point of time and assuming that the victim alleged mischief against him and the latter committed the overt act, it prima facie appears to be during and in course of discharging the official duty and therefore, the learned court below before taking cognizance of the offences should have insisted upon for sanction in terms of Section 197 Cr.P.C. which it did not do and for the said reason, the order cognizance dated 8th March, 2019 is not tenable in law so also the criminal proceeding in ICC Case No.9 of 2016 unless there is sanction.

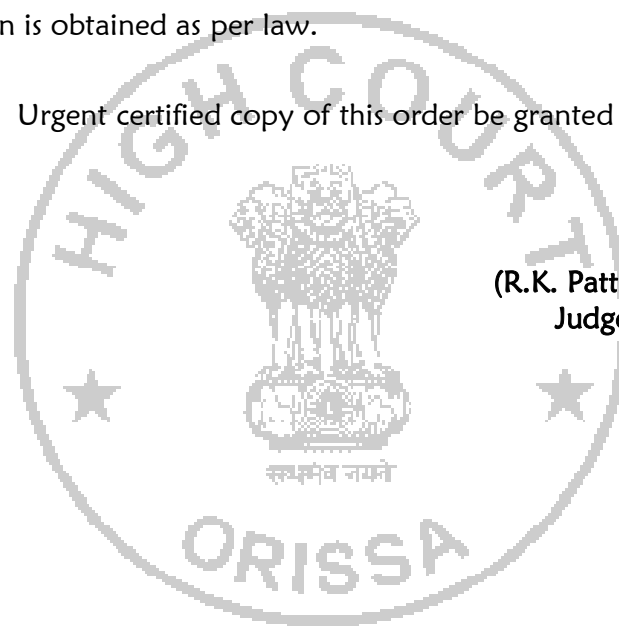
9. The aforesaid view is subscribed from catena of decisions of Apex Court where it has been held and observed that the public servants should not be unduly harassed by false and vexatious criminal prosecutions and therefore, before taking cognizance of the offences especially when one is found to be in duty and discharging official functions, the criminal courts should insist for sanction as per and in accordance with Section 197 Cr.P.C. which has not been accomplished in the present case. So the Court concludes that

without sanction, the order of cognizance under Annexure-2 cannot be sustained in law.

10. Accordingly, it is ordered.

11. In the result, CRLMC stands allowed. Consequently, the impugned order under Annexur-2 passed in 1CC No.9 of 2016 pending in the file of learned S.D.J.M. Gunupur is hereby quashed as the criminal proceeding is not to be proceeded with unless sanction is obtained as per law.

12. Urgent certified copy of this order be granted as per rules.



(R.K. Pattanaik)
Judge

TUDU