

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.4110 of 2011

Bhaskar Chandra Barik.

....

Petitioner

-versus-

State of Odisha & another.

....

Opposite Parties

CORAM: JUSTICE S.PUJAHARI

ORDER
16.03.2022

Order No.

09.

1. This matter is taken up through Hybrid mode.
2. The Petitioner in this application under Section 482 of the Code of Criminal Procedure (for short “Cr.P.C.”) has prayed for quashing of the order dated 25.07.2011 passed by the learned J.M.F.C., Loisingha in I.C.C. Case No.1 of 2011 taking cognizance of the offences under Sections 323/506 of IPC against him.
3. Heard the learned counsel for the Petitioner and the learned counsel for the State. None appears for the opposite party no.2.
4. As it appears, the aforesaid complaint was filed by the opposite party no.2 against the Petitioner alleging therein that

on 14.12.2010 at about 11.45 a.m. near the Salebhata Bus Stand when the opposite party no.2-complainant met the Petitioner and requested him to repair the leakage from Gaikhaie irrigation canal, he stated to have abused him in filthy language and also extended threat to him, so also he stated to have assaulted the complainant with his helmet in presence of some of the witnesses.

5. It is the contention of the learned counsel for the Petitioner that the aforesaid case has been foisted against the Petitioner at the instance of one Abinash Mishra, who is an influential person in the locality, against whom the Petitioner has lodged an FIR on 14.12.2010 vide Loisingha P.S. Case No.173 of 2010 registered under Sections 341, 323 and 506 of IPC. Furthermore, it is subject by him that the Petitioner being a junior engineer and the altercation that has taken place with regard to discharge of his official duty, as revealed from the complaint petition, the Court could not have proceeded against him in absence of sanction under Section 197 of Cr.P.C. Admittedly, the Petitioner is a public servant. The aforesaid allegations having reasonable connection in due discharge of the official duty, the court could not have proceeded without sanction of the Government inasmuch as Section 197 Cr.P.C. mandates as thus;

“197. Prosecution of Judges and public servants-

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any

offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction”

6. So also the apex Court in the case of **Matajog Dobey vrs. H.C. Bhari** reported in **AIR 1956 SC 44** have held as follows:

“In *Shreekantiah Ramayya Munipalli v. The State of Bombay*(1), Bose, J. observes as follows: "Now it is obvious that if section 197 of the Code of Criminal Procedure is construed too narrowly, it can never be applied, for of course, it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning". The question of previous sanction also arose in *Amrik Singh v. The State of PEPSU*(6). A fairly lengthy discussion of the authorities is followed up with this summary: "If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under section 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required".

7. Considering the facts and the submissions made, so also the law laid down as above, this Court is of the view that the offence alleged to have been committed having close nexus with due discharge of official duty and also committed during the course of the official duty, the court could not have taken cognizance of the offence alleged and proceeded against the Petitioner in the absence of the sanction under Section 197 Cr.P.C. Considering the aforesaid, this Court allows the

Criminal Misc. Case in exercise of the power under Section 482 Cr.P.C. and consequently quashes the criminal prosecution initiated against the Petitioner vide ICC No.1 of 2011 pending in the court of learned J.M.F.C., Loisingha. The court concerned shall do the needful to close the proceeding in view of the aforesaid order, on receipt of the certified copy of this order

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

MRS/PKS

