

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1650 of 2022

Azad @ Duna Kesab Rao *Petitioner*
-versus-
State of Orissa and another *Opposite Parties*

CORAM: JUSTICE S. PUJAHARI

Order
No.

ORDER
30.06.2022

01. 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 entire criminal proceeding initiated against him in connection with Bissam Cuttack P.S. Case No.43 of 2013, corresponding to C.T. Case No.125 of 2013, pending in the Court of Additional Sessions Judge, Rayagada.
3. Heard the learned counsel for the Petitioner and the learned counsel for the State-Opposite Party No.1
4. The prosecution allegation reveals that on 25th April, 2013, while the Opposite Party No.2-Informant was in her home, some of the persons named in the F.I.R. along with other members of naxal group kidnapped her on the point of gun and keeping her in confinement and regularly having sex with her.

However, she could make escape from their clause and after fifteen days of such escape, lodged the report.

5. Pursuant to such report, F.I.R. was registered, investigation was commenced and charge sheet have been filed against the Petitioner and others for alleged commission of offence punishable under Sections 363, 366(A), 376(D), 506 read with Section 34 of the I.P.C., Sections 25 and 27 of the Arms Act and Section 4 of the POCSO Act, 2012. The court took cognizance and issue N.B.W.(A) against the accused persons, who are stated to be absconding.

6. Learned counsel for the Petitioner submits that the allegation is false and fabricated as there is no material to substantiate the same, the aforesaid proceeding, which is pending since 2013, against the Petitioner be quashed, moreso when the F.I.R. was lodged at a belated stage which speaks of the allegation is an outcome of implication of due deliberation and concocting the facts.

7. Learned counsel for the State, however, submits that the contention is devoid of substance, as the delay has been explained and the victim being kept in confinement by the subversive element to satisfy their lust, she as such could not lodge the report.

8. However, the Opposite Party No.2-Informant in this case has explained the delay in lodging the F.I.R., so the

allegation appears to be serious in nature and prima facie materials are available indicating the commission of said offences and also the involvement of the Petitioner.

9. Before addressing the contention of the parties, it would be apposite to mention here that law with regard to quashment of the order of cognizance and the proceeding has since been well settled in a line of decisions of the apex Court. One of such decision is the ***Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., reported in (2000) 3 SCC 269***, wherein the Apex Court have held as follows:-

“Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgement of first information report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the court on a perusal of the complaint comes to a conclusion that the allegations leveled in the complaint or charge-sheet on the face of it do not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law. To exercise powers under Section 482 of the Code, the complaint in its entirety will have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the

face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear ex facie on the complaint. The truth or falsity of the allegations would not be gone into by the Court at this earliest stage. Whether or not the allegations in the complaint were true is to be decided on the basis of the evidence led at the trial.

10. It is only in cases when the allegations in the complaint do not make out any case against the accused nor do they disclose the ingredients of an offence alleged against the accused or the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion that there is sufficient ground for proceeding against the accused, the power under Section 482 Cr.P.C. has to be exercised to quash the prosecution, is also the view in the case of *Medchl Chemicals & Pharma (P) Ltd.* (supra). Besides the same, if any statutory bar is there to proceed against the accused persons, the Court shall also not proceed against them.

11. Taking note of the same, when the case in hand is addressed, appears to this Court that the contention of the Petitioner that since there was delay in lodging the F.I.R. which has been also explained and circumstances in which the offence stated to have committed and also the heinousness and seriousness of the offence as well as police on investigating the same has filed the charge sheet and it is never the case of the Petitioner that absolutely there is no material against him to proceed against him in this case, this Court is not inclined to

quash the aforesaid proceeding against the Petitioner on the ground stated, moreso when the case of the Petitioner is not covered by any of the circumstances as laid down in the case of *Medchl Chemicals & Pharma (P) Ltd.* (supra).

12. Accordingly, the CRLMC stands dismissed.

13. However, learned counsel for the Petitioner submits that the trial court be directed to conclude the trial of the aforesaid case expeditiously.

14. Considering such submission, this Court directs the trial court to conclude the trial of the aforesaid case as early as possible, preferably within six months from the date of production of certified copy of this order, if there is no other legal impediment.

(S. Pujahari)
Judge

DA