

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2082 of 2016

Hiranyanath Sethi

....

Petitioner

Mr. J. Behera, Advocate

-versus-

State of Odisha and another

....

Opp. Parties

Mr. S.N. Das, A.S.C.

Mr. P.K. Maharaj, Adv.(O.P.2)

CORAM:

JUSTICE G. SATAPATHY

ORDER

11.10.2022

Order No.

- 04.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. The petitioner by way of an application U/S. 482 of Cr.P.C. prays to quash the order passed on 30.04.2016 by learned J.M.F.C., Ranpur in 1.C.C. Case No.67 of 2013 taking cognizance of offences.
 3. The facts in precise are that on 29.10.2013 at 9 P.M., the petitioner along with one A.S.I. of Ranpur Police Station came to the house of the complainant to search for her son Deepak Nahak, but when the complainant asked them about the reason for such search, the petitioner and the A.S.I. of Ranpur Police Station reacted by abusing the complainant in filthy language and dragged her to the verandah as well as pushed her resulting her to fell down in a naked condition and her modesty was outraged. When the family members of the complainant intervened, the petitioner and A.S.I. decamped by forcibly taking away the son of the complainant, who incidentally reached at the spot.

On the next date, when the complainant went to Ranpur Police

Station to meet her son as well as to enquire about the cause of detention of her son, she was not allowed to speak with her son. Finding no other alternative, the complainant drew the attention of Superintendent of Police, Nayagarh for which the A.S.I. threatened the son of the complainant by showing a gun and forcibly obtained his signature on a printed form and thereafter, left the son of the complainant. The complainant again drew the attention of Superintendent of Police, Nayagarh but in vain. Finding no other alternative, the complainant lodged a complaint in Court of law. On scrutiny of complaint, statement of complainant and witnesses and sanctioned order received from Superintendent of Police, Nayagarh, the learned J.M.F.C., Ranpur by an order passed on 30.04.2016 took cognizance of offences punishable U/Ss.294/323/354/342/384/34 of IPC read with Section 3 S.C./S.T. (PA) Act and accordingly, issued summons to the petitioner and the said A.S.I. as accused persons.

Feeling dissatisfied and aggrieved by the order taking cognizance, the petitioner has preferred this application U/S. 482 of Cr.P.C. to quash the same.

4. In course of hearing of CRLMC, Mr.J.Behera, learned counsel for the petitioner by drawing the attention of the Court to the photocopy of caste certificate issued in favour of the petitioner by S.D.O, Khurda submits that since the petitioner belongs to 'SC' by caste, no liability under S.C & S.T. (PA) Act can be attracted against the petitioner. It is further submitted by him that the complaint itself does not disclose any offence against the petitioner and, therefore, the order taking cognizance of offences against the petitioner is otherwise bad in the eye of law and is required to be quashed. It is also submitted that the learned J.M.F.C., Ranpur has arbitrarily exercised his jurisdiction to take cognizance of offences without any rhyme or reason and the order impugned in this case

being not passed in consonance of law may kindly be quashed.

5. On the contrary, Mr.S.N.Das, learned counsel for the State submits that since there are two accused persons in this case and cognizance is always taken of the offence but not against any person, the issuance of summon against the petitioner cannot be faulted with, especially when there is prima facie case being made out against the accused persons. It is also submitted that since the order impugned in this case has been carefully passed with due scrutiny of materials on record, the same cannot be quashed. In summing of his argument, learned counsel for the State prays to dismiss the CRLMC application.

6. After bestowing an anxious and careful consideration to the rival submissions upon reference to the order impugned in this case, it is to be reminded that any Magistrate of first class U/S. 190(1) of Cr.P.C. or a Magistrate of second class specially empowered in this behalf by Chief Judicial Magistrate U/S. 190(2) of Cr.P.C. may take cognizance of any offence (a) upon receiving a complaint of facts which constitute such offence (b) upon a police report of such facts and (c) upon information received from any person other than a police officer or upon his own knowledge, that such offence has been committed. The petitioner in this case has annexed the photocopy of complaint, besides the photocopy of caste certificate issued by S.D.O., Khurda and photocopy of some pages of service book of the petitioner as well as the certified copy of order impugned in this case. A careful perusal of facts narrated in the complaint upon reference to the order impugned in this case, it cannot be said that the ingredients of offences alleged against the petitioner are not disclosed. On coming back to the main plank of submission advanced on behalf of the petitioner that since he belongs to SC caste, no liability U/S. 3 of S.C. & S.T Act is attracted against him and thereby the impugned order is bad in

the eye of law but such submission cannot be countenanced in view of the fact that a complaint has been lodged against two persons and no material has been placed or brought to the knowledge of this Court about the caste of other person accused of committing the offences. Besides, the document as produced on behalf of the petitioner under Annexure-2 which is a photocopy of true copy, named and styled as “caste certificate” issued by the S.D.O., Khurda on 30.11.1978 in Misc. Case No.232/78-79 dated 02.11.1978 cannot be taken into consideration at this stage without the original being produced and even if, for a moment the same is considered by giving benefit of it to the petitioner without disputing his caste to be Dhoba, which is definitely coming under SC category, it cannot be a ground to find fault with the impugned order for taking cognizance of offences under S.C. & S.T. (PA) Act, especially when there is allegation in the complaint against another person accused of committing offences along with the petitioner by abusing the complainant uttering her caste “Dhoba” and the caste of other person has not been disclosed before this Court by way of filing of any scrap of paper. Further, neither the co-accused A.S.I. has been made as a party in the present CRLMC nor is his caste brought to the notice of this Court. True it is that cognizance is always taken of offences and when more than one person have been accused of committing certain offences, the proper stage to know about the culpability of such persons with regard to the accusation is at the time of consideration of charge. Since there are two accused persons including the petitioner in this case and the caste of other accused has not been disclosed before this Court, it cannot be said that the order taking cognizance of offence U/S. 3 S.C./S.T. (PA) Act is unsustainable in the eye of law.

7. On reverting back to the order impugned taking cognizance of other offences, neither the statements of witnesses nor that of complainant except the complaint are produced for perusal of this Court and the learned

counsel for the petitioner could not convince the Court about absence of any ingredient of offences under which cognizance is taken nor was the Court made convinced that the facts as narrated in the complaint do not constitute any offence. Besides, taking cognizance of offence and issuing processes are two different actions as contemplated under law and the order impugned in this case appears that cognizance of offences has been taken with issuance of process against the petitioner and other co-accused person and the submission advanced on behalf of the petitioner could not remotely persuade this Court to consider the process issued against the petitioner to be illegal or arbitrary or not in consonance with the provisions of law warranting exercise of power U/S. 482 of Cr.P.C.

8. In the ultimate appraisal of the totality of the materials produced on behalf of the petitioner upon reference to the rival submissions raised at the bar, no convincing or cogent reasons or reliable material being brought to the notice of the Court to find out any fault with the impugned order warranting indulgence of this Court in exercise of power U/S. 482 of Cr.P.C.

In the result, the CRLMC sans any merit stands dismissed.

(G. Satapathy)
Judge

Kishore