

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.529 of 2011

Bilasini Mallik and others *Petitioners*
versus-
State of Orissa *Opposite Party*

CORAM: JUSTICE S. PUJAHARI

Order
No.

ORDER
07.03.2022

08. 1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioners with a prayer to quash the order dated 22nd January, 2011 passed by the learned Assistant Sessions Judge, Nilagiri in S.T. Case No.29 of 2010/267 of 2009 wherein the learned Assistant Sessions Judge rejected the application for discharge of the Petitioners.
3. Heard the learned counsel for the Petitioners and the learned counsel for the State.
4. The Petitioners in this case has assailed the order of refusing to discharge them in the aforesaid case.

5. It is the contention of the Petitioners that since in the bail petition the Court had held that no offence under Section 307 of I.P.C. is made out and granted bail, so also the charge sheeted witnesses have been implicated by them in other case, the allegation against the them are omnibus in nature and also injury report does not disclose that the same was inflicted intending to cause death of the injured, there was no sufficient grounds to presume that the Petitioners have committed the offence, more particularly, the offence under Section 307 of I.P.C. and, as such, the same is liable to be quashed.

6. However, learned counsel for the State taking note of the impugned order submits that the trial court addressing all the contentions having refused to discharge the Petitioners and there being no illegality and infirmity in the impugned order, particularly, when the materials on record reveals the Petitioners conjointly assaulted and caused injuries on the injured which discloses the aforesaid offence, notwithstanding the fact that in the trial court the aforesaid contentions were raised and also some discrepancies with regard to F.I.R. version as well as in the statement under Section 161 of Cr.P.C. was

brought, the Court refuses to discharge the Petitioners, the impugned order cannot be said to be bad. Hence, challenging the order of impugned being devoid of merit, the same is liable to be dismissed.

7. Needless to say that at the time of framing of charge, the Court shall look into the materials as to whether there is sufficient ground to presume the accused to have committed the offence alleged basing on materials available on record, if it finds so, then it is obligated to frame charge for the said offence. The detailed appreciation of the materials and contradictions appearing in different version of witnesses at this stage is not to be looked into. Furthermore, any observation made in the bail application is not binding to the Court while framing of charge inasmuch as the Court has to look into the materials on record and not to follow the observation made in the interlocutory application which has rendered solely for the purpose of consideration for the prayer for bail. Furthermore, it is well settled in law that while considering the prayer for bail, the Apex Court has deprecated the practice of the detailed documentation and appreciation of the materials on record.

Here, the trial court is not binding by observation of the court in the bail application while considering the contention of discharge. As it appears, the trial court taking note of aforesaid contentions, as such, refused the prayer to discharge, particularly from offence under Section 307 of I.P.C. vide the order impugned. The ground that is taken on the veracity of the version regarding the witnesses as they were accused is another case is not at all germane in a prayer of discharge with the materials contradiction which can be proved in evidence adduced.

8. Considering the same, this Court is of the view that the impugned order suffers from no illegality or impropriety. As such, the same warrants no interference in this Criminal Misc. Case.

9. Accordingly, the CRLMC stands dismissed.

(S. Pujahari)
Judge

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