IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 1125 of 2021

1. ***Ratikanta Nayak*** .... ***Petitioners***
2. ***Upendra Kumar Nayak***
3. ***Radhakanta Nayak***

Mr. Bijaya Kumar Dash, Advocate

Versus

State of Orissa .... ***Opposite Party***

Mr. S.S. Pradhan, AGA

CORAM:
JUSTICE SAVITRI RATHO

ORDER

Order No.	**04.03.2022**
04.	1. This matter is taken up through hybrid mode.

2 BLAPL No. 5496 of 2020, BLAPL No. 5628 of 2020, ABLAPL No. 8537 of 2020 and W.P(C) No. 19275 of 2019 which had been called for reference, be delinked from this case.

3. This is an application under section 482 of the Code of Criminal Procedure filed by the petitioners challenging the charge sheet order dated 17.03.2020 filed in Dhenkanal Town P.S. Case No. 66 of 2020 arising out of 1CC Case No. 79 of 2019 corresponding to G.R. Case No. 208 of 2020 and the order of cognizance dated 20.10.2020 passed by the learned S.D.J.M., Dhenkanal taking cognizance of offences under Sections 409/ 120-B/471/420/34 and 468 of IPC.

4. The prosecution allegations in brief is that the complainant-Nigamananda Nanda in 1CC Case No. 79 of 2019, was a member of a registered N.G.O. under the name and style "Jana Jagaran Kendra" (in short "the N.G.O.") having its office at village-Belapada, P.S.-Motanga under district Dhenkanal. This N.G.O. had a training centre-cum-office at Mouza-Mulisingha under P.S. Sadar and in the year, 2018 the said training centre-cum-office of the N.G.O. was acquired by the Government for extension of NH-55. An amount of Rs.87,14,412/- was awarded as compensation in favour of the said N.G.O. for acquisition of building and Rs.1,02,400/- was awarded to N.G.O. for acquisition of land (total amount awarded was Rs.88,16,812/-). The Director of the N.G.O., Ratikanta Nayak-petitioner no.1 and Upendra Nayak-petitioner no.2 (Treasurer) without intimating the Secretary and other members of the N.G.O. passed a resolution by forging some documents and signatures of some members and received the said money through Indian Bank Account which was meant only for CAPART purpose. These two accused persons transferred the said money to their personal account and in association with others and the Land Acquisition Officer of NH 42/55 Dhenkanal forged the documents, criminally conspired to misappropriate the public money and committed and other offences. The complainant had

been named as Treasurer but his name was removed and the name of petitioner no.2-Upendra Kumar Nayak added by forging documents for the purpose of misappropriation of the entire compensation money. The money received by the accused persons is the property of the N.G.O. and they have cheated it and the Government by misappropriating the money. The Land Acquisition Officer did not take any steps to prevent this and played an active role in payment of money illegally to accused persons.

5. This complaint was sent by the learned S.D.J.M., Dhenkanal under Section 156(3) of Cr.P.C. for investigation to the Dhenkanal Town Police Station pursuant to which Dhenkanal Town P.S. Case No. 66 of 2020 was registered for commission of offence under Sections 409/ 120-B/471/467/420/34 of IPC. During investigation, I.O. found that the money which has been deposited in Indian Bank Account of the N.G.O. on 24.09.2018 was transferred to the account of one Radhakanta Nayak, S/o-Ratikanta Nayak -petitioner no.3. Out of the total amount, Rs.45,00,000/- was transferred to the account of Radhakanta Nayak, S/o-Ratikanta Nayak, Rs. 26,00,000/- transferred to the account of Ratikanta Nayak-petitioner no.1. Hence apart from petitioner no.1 and 2 who were named in the complaint, charge sheet has also been filed against Radhakanta Nayak-petitioner no.3. He is the son of

petitioner no.1- Ratikanta Nayak. Thereafter it was also found that in spite of direction of the Hon'ble Court the two accused persons did not refund the entire money did not deposit anything for refund of compensation amount to the account of "Jana Jagaran Kendra". Charge sheet was filed against the three petitioners for commission of offences under Sections 409/ 120-B/471/420/34 and 468 of IPC.

6. Mr. Bijaya Kumar Dash, learned counsel for the petitioners submits that there is no material to implicate petitioner no.3, who is the son of petitioner no.1 other than the fact that his Bank account has been utilized for deposit and withdrawal of money. He further submits that false allegation has been made against petitioner no.1- the Director of N.G.O., Ratikanta Nayak and petitioner no.2-the Treasurer, Upendra Nayak on account of prior dispute of the complainant with the N.G.O. for which it has been removed from the management. The case is therefore, squarely covered under the clause 7 of the guidelines prescribed in the decision of the Hon'ble Supreme Court in the case of

7. He also relies on the decision of the Hon'ble Apex Court in the case of ***Inder Mohan Goswami & Ors. Vrs. State of Uttaranchal & Ors.*** reported in ***(2008) 39 OCR (SC) 188*** and the case of ***Rukmini Narvekar vrs. Vijaya Satardekar & Ors.*** reported in (2008) 41 OCR (SC) 853 and the case of ***Mrs. Rupan Deol***

Bajaj & Anr. vrs Kanwar Pal Singh Gill & Anr. reported in ***AIR 1996 SC 309*** in support of his submission that the Court while taking cognizance is not bound by the opinion of the I.O. that the offences are made out and the Court taking cognisance has to independently assess the materials available on record and the High Court has power to quash the proceeding where a criminal proceeding is manifestly attended with mala fide and/or whether the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

8. Mr. S.S. Pradhan, learned Additional Government Advocate vehemently opposes the said application and submits that prima facie case is made out against the accused persons for which no interference was warranted by the Court. Even if the complainant had a grudge against the petitioner nos.1 & 2, since the allegations made by him were found to be true during investigation for which the police submitted chargesheet and the learned SDJM has taken cognisance of the offences after perusing the records and finding that prima facie case is made out , no case is made out for quashing the order of cognizance or the chargesheet . He submits that it has been settled by the Hon'ble Supreme Court that while considering an application under Section 482 of the

Cr.P.c , a threadbare analysis of the materials collected against the accused persons should not be done nor their defence is to be considered .That is a matter for trial. He relies the decision of the Hon'ble Apex Court in the case of ***State Of Karnataka vs M. Devendrappa & Anr*** reported in ***2002 (3) SCC 89, Sonu Gupta vs Deepak Gupta & Ors*** reported in ***2015 (3) SCC 424*** , ***Sau. Kamal Shivaji Pokarnekar vs The State Of Maharashtra*** reported in ***(2019) 74 OCR (SC) 131*** , ***Md. Allauddin Khan vs The State Of Bihar*** reported in ***2019 (6) SCC 107*** in support of his submissions .

9. In the case of ***Ch. Bhajan Lal & Ors*** *(supra)* the Supreme Court held that exhaustive or inflexible guidelines cannot be framed for regulation of extraordinary power under Article – 226 or inherent power under Section 482 of the Cr.P.C , but by way of illustration gave seven categories of cases where exercise of such power may be warranted . It has also held that quashing of a criminal proceeding should be exercised very sparingly and in the rarest of rare cases .But for such purpose the court should not embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The relevant portion is extracted below:

“ *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and of cases by way of illustration wherein such power process of any court or otherwise to secure the lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases;

that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

As noted earlier , Mr Dash learned counsel for the petitioners has urged that this case falls under category 7 .

In ***Inder Mohan Goswami*** (Supra) quoted paragraphs 21 & 22, which reads as follows:-

"xxxx xxxx xxxx

21. We have heard the learned counsel for the parties at length. The appellants who are office-bearers of a charitable organization, namely, Sanatan Dharma Pratinidhi Sabha, in order to protect the interests of the Sabha cancelled the Power of Attorney by executing a registered Cancellation Deed after giving notice to the Power of Attorney holders. The appellants sold only that part of the land to Sunil Kumar on behalf of the Sabha for which an agreement to sell with the complainants (respondents) had already been terminated. The respondent's earnest money had been forfeited. All of this was only done after appellants had given respondents due notice.

22. The veracity of the facts alleged by the appellants and the respondents can only be ascertained on the basis of evidence and documents by a civil court of competent *jurisdiction. The dispute in question is purely of civil nature and respondent no.3 has already instituted a civil suit in the court of Civil Judge. In the facts and circumstances of this case, initiating criminal proceedings by the respondents against the appellants is clearly an abuse of the process of the court.*

xxxx xxxx xxxx."

In the case of ***Rukmini Narvekar*** **(Supra),** the Supreme Court while dealing with orders of the trial court and High Court pertaining to an application under Section 227 of the Code of Criminal Procedure found no incriminating material against the accused as the only material against her was a sale deed prepared in her favour.

In the case of ***Mrs. Rupan Deol Bajaj (Supra),*** the Supreme Court has interlalia held as follows :

"....We are constrained to say that in making the above observations the High Court has flagrantly disregarded - unwittingly we presume - the settled principle of law that at the stage of quashing an FIR or complaint the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein. Of course as has been pointed out in Bhajan Lal's case (supra) an F.I.R. or a complaint may be quashed if the allegations made therein are so absurd and inherently improbable that no prudent person can ever reach a just

> *conclusion that there is sufficient ground for proceeding against the accused but the High Court has not recorded such a finding, obviously because on the allegations in the FIR it was not possible to do so. For the reasons aforesaid we must hold that the High Court has committed a gross error of law in quashing the FIR and the complaint. Accordingly, we set aside the impugned judgment and dismiss the petition filed by Mr. Gill in the High Court under Section 482 Cr.P.C."....*

In the case of ***M. Devendrappa*** (supra) the Supreme Court has interalia held that it is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding.

In the case of ***Sonu Gupta*** (supra) it has been held that at the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to to find out whether prima facie case has been made out for summoning the accused persons > He is not required to consider the defence version or evaluate the merits of the materials or evidence of the complainant . At the stage of framing of charge an accused may seek for discharge if he or she can show that the materials against him or her are insufficient for the purpose of trial .

In the case of ***Sau. Kamal Shivaji Pokarnekar*** (supra) the Apex Court interalia held that at the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the and the correctness or otherwise of the said allegations has to be decided only in the trial.

In the case of ***Md. Allauddin Khan*** (supra*)* . it was interalia held that the whether there are contradictions or/and inconsistencies in the statements of the witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the Judicial Magistrate during trial when the entire evidence is adduced by the parties and that stage is yet to come and High Court had no jurisdiction to appreciate the evidence of the proceedings under Section 482 of the Code Of Criminal Procedure, 1973 (for short "Cr.P.C.")

12. In view of the aforesaid pronouncements of the supreme Court and the nature of materials collected against the petitioners , I do not think this is the stage to examine the merit of the prosecution

allegations so as to interfere with the impugned order of cognizance by exercising power under Section 482 Cr.P.C. However liberty is granted to the petitioners to raise all their contentions at the time of framing of charge by filing an appropriate application , if they are so advised .

13. Granting such liberty , the CRLMC is dismissed .

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

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(Savitri Ratho)
Judge

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