

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3383 of 2013

Dibakar Panigrahi & another ***Petitioners***
-versus-
State of Odisha ***Opposite Party***

CORAM: JUSTICE S.PUJAHARI

ORDER
13.07.2022

Order No.

08. 1. This matter is taken up through Hybrid mode.
2. Heard learned counsel for the Petitioners and learned counsel for the State.
3. This application under Section 482 of Cr.P.C. has been filed by the Petitioners with a prayer to quash the order dated 10.10.2012 passed by the learned S.D.J.M., Gunupur in G.R. Case No.119 of 2010 wherein the learned S.D.J.M has taken cognizance under Section 272/34 IPC against them.
4. As it appears, FIR was lodged by one Koino Raika of village Karanjasing in the district of Rayagada alleging therein that on 1.8.2020 at about 8.30 to 9.00 A.M he along with fifty tribal people attended a function at Karanjasing Church and in the said function, food was prepared for the participants. After taking the food so prepared many of them felt stomach problem and became unconscious. Since they had purchased the oil and other

food articles on 31.07.2010 sold by the present Petitioner and his son Sudhakar Panigrahi, they suspected that the oil was poisonous one. On receipt of such report, Puttasingh P.S. Case No.15 of 2010 was registered under Sections 272/34 IPC. Investigation was conducted and on completion of the investigation, final report was submitted on the ground that the case was non-cognizable one. On receipt of the same, learned Magistrate on a wrong premises issued notice to the Informant to have his response. The Police, however, on realizing the mistake that the offence committed was cognizable one, filed an application to investigate into the matter further. The learned S.D.J.M. while rejecting that petition made an observation that the Investigating Agency has statutory power to further investigate the case, even after submission of final form under Section 173(8) of Cr.P.C., if any further evidence comes to the knowledge of the Investigating Agency. After re-opening the investigation, police filed charge-sheet, pursuant to which, cognizance under Section 272/34 IPC has been taken and summons have been issued to the Petitioners. The Petitioners have come to this Court challenging the same on the ground that without any permission from the court under Section 173(8) Cr.P.C. the Police could not have filed another charge sheet basing on the self-same materials available on record and the court on the same could not have proceeded against the Petitioners.

5. However, during the course of hearing, learned counsel for the Petitioners submits that even if the prosecution case is taken in its entirety, prima facie no case is made out against the

Petitioners inasmuch as the ingredients of the offence under Section 272/34 IPC are squarely lacking in this case.

6. Learned counsel for the State, however, while defending the impugned order passed fairly submits that in this case though the oil allegedly purchased from the shop of the petitioners and said to have been adulterated, was sent for chemical examination, but the report has not yet been received.

7. As it appears in this case, the Police though registered the case as a cognizable one but subsequently basing on the supervision report on a wrong premises without taking note of the Orissa Amendment treating the offence under Section 272 IPC to be cognizable and triable by the court of session, submitted a report indicating the same to be a case of non-cognizable offence. The learned SDJM also being oblivious of the above, did not consider to apply his mind to the erroneous report of the police or to consider for taking cognizance on the basis of the materials earlier collected by the Investigating Officer, and made an observation regarding the power of the Investigating Officer under Section 173(8) of Cr.P.C.

8. It is well settled that notwithstanding the fact that the Police has filed a final report, Police is not bereft of its jurisdiction to investigate into the matter under Section 173(8) Cr.P.C. on receipt of further materials even if a final report is furnished, and to place charge sheet if any materials emerge indicating commission of cognizable offence and involvement of

the accused persons therein. Here, the Investigating Officer being oblivious of the above provision sought for the permission from the Court which was not required, though in many decisions, it has been held that such permission is sought for judicial propriety, and not as a mandatory requirement, and submitted charge sheet rectifying his error. The same appears to have caused no prejudice to the Petitioners. Hence, challenge to the order on the ground stated that in the absence of fresh materials charge sheet could not have been filed in exercise of the power under Section 173 (8) Cr.P.C., therefore in the facts and circumstances, is found to be without any substance.

9. Now coming to the second contention raised, as it is stated in this case that the Petitioners stated to have sold the poisonous oil and food stuff which was used in the feast and taking such food prepared, many persons are stated to have suffered from stomach problem and other ailments, but to make out such accusation, there must be materials on record to indicate that articles sold by the Petitioners were adulterated one. The report in this regard has not been obtained from the Public Analyst, as fairly submitted by the State Counsel. In the absence of the same, this Court is constrained to take a view that the learned trial court has mechanically without scrutinizing the materials available record, taken cognizance of the offence and proceeded against the Petitioners.

10. Accordingly, the impugned order of cognizance and issuance of process against the Petitioners in the aforesaid case is liable to be quashed. Hence, the same is quashed.

11. With the aforesaid order, this CRLMC stands disposed of.

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

(S. Pujahari)
Judge

PKS/MRS

