

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1824 of 2022

Purusottam Pati and another *Petitioners*
-versus-
State of Odisha *Opposite Party*

CORAM: JUSTICE S. PUJAHARI

ORDER

27.07.2022

Order
No.

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 Petitioners with a prayer to quash the order dated 30th June, 2022 passed by the learned S.D.J.M., Bhadrak in G.R. Case No.2372 of 2019 wherein and whereby their discharge petition has been rejected.
- 3.** Heard the learned counsel for the Petitioners and the learned counsel for the State-Opposite Party.
- 4.** It is the case of the Petitioners that though the cognizance of the offences under Sections 341, 294, 354-A, 354-B, 506/34 of IPC was taken and charges

were framed against them, but the materials on record being not capable of inspiring confidence and some of the offences being not made out, the trial court has illegally rejected their prayer for discharge. Therefore, the order having been passed in a most mechanical manner, the impugned order is liable to be set aside and the petitioners are entitled to be discharged.

5. However, learned counsel for the State has defended the impugned order.

6. Before the contentions of the parties being addressed, it may be observed that in a case triable by warrant procedure, unless and until the case is ripened to the stage of framing of charge after the procedural norms are complied with, the accused has no right to seek for discharge, inasmuch as such a petition is nothing but seeking review of the order of cognizable, which has been prohibited by the apex Court in the case of **Adalat Prasad vs. Rooplal Jindal & others**, reported in 2004 (29) OCR (SC) 264. In spite of the same, I am constrained to observe that in many cases,

though the case is not posted for charge and the accused is not present on the date of hearing of the charge, the court takes up petition filed for discharge, and passes order thereon, and thereafter posts the case for charge. The accused thereafter approaches this Court challenging such order in the absence of any head of charge being framed against him. The same is not permissible as per the scheme of the Criminal Procedure Code. It is only when a case is posted for charge after supply of police paper, the accused can file a petition challenging the case being posted for framing of charge against him on the ground that on the materials available on record the charge for which cognizance has been taken and he is going to be proceeded against, is groundless. In this regard, it would be apposite to quote the provisions of Sections 238, 239 and 240 of the Code of Criminal Procedure.

“238. Compliance with section 207. When, in any warrant case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, the Magistrate shall satisfy himself that he has complied with the provisions of section 207.

239. When accused shall be discharged.- If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

240. Framing of charge. (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried."

7. From the aforesaid, it appears that upon considering the police report and the documents sent with it under Section 173 Cr.P.C. and after hearing the prosecution if the Magistrate considers the charge against the accused to be groundless, he may discharge the accused but reasons have to be recorded. After considering the aforesaid, if the Magistrate is of the opinion that there are sufficient grounds to presume that the accused has committed an offence triable by the said court and the Magistrate is competent to punish the accused for the same, he shall frame the

charge in writing against the accused and read over and explain the same to the accused and record his plea. Therefore, a formal petition is not at all required seeking for discharge, inasmuch as the accused, during the course of hearing, either in person or through his counsel, can plead that the charge against him is groundless for the reason that on the materials available on record as submitted by the prosecution, no offence is made out against him. It may also so happen that notwithstanding the order of cognizance, if at the time of hearing on the question of charge, if some of the offences taken cognizance of are found to have not been made out for the purpose of framing charge, the Court can discharge the accused from those offences. If a petition for discharge is filed, the court shall have to pass a reasoned order while allowing the same, but while refusing to discharge, such a reasoned order is not essential. However, with anguish I express that the procedure as laid down is not being scrupulously adhered to by the trial Courts, although in several

decisions of this Court they are reminded of the Codal norms and requirements.

8. Accordingly, although this petition is not entertainable without head of charge, but taking note of the facts and circumstances, this Court is of the view that the trial court in a mechanical manner has dealt with the petition filed and proceeded with the case. Hence, while questioning the impugned order this Court gives opportunity to the Petitioners to raise all such contentions as available to them on the date when the case was taken up for charge, and the trial court in that event, considering the materials available on record and also keeping in mind the aforesaid mandate, shall pass appropriate such order with regard to the charge, to be framed against the Petitioners.

9. Needless to say that in view of the mandate of Section 239 Cr.p.C. the trial Court must remain alive to the fact that while considering the question of framing of charge, although there is no legal requirement to sift and weigh the materials on record, but the trial Court

being vested with the power of discharging the accused from one or more offences, it can sift and weigh the evidence for the limited purpose to find out whether prima facie case against the accused is made out or not and whether the same is sufficient to proceed against the Petitioners for the purpose of framing of charge or to discharge him holding the charge to be groundless. The aforesaid therefore makes it clear that the Court at this stage though not required to have a detailed appreciation of the evidence whether the material placed end in conviction of the accused or not, but not to accept the prosecution allegation as gospel truth to proceed against the accused.

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

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

(S. Pujahari)
Judge