

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2365 of 2018

Manoranjan Khatua. ***Petitioner***
M/s. N. Sahani, K. Pradhan, Advocates

-versus-

State of Odisha. ***Opposite Party***
Addl. Standing Counsel

CRLMC No.3389 of 2018

Sanjay Kumar Pradhan. ***Petitioner***
M/s. P.K. Jena, D.P. Mohapatra,
A. Sahu, Advocates

-versus-

State of Odisha. ***Opposite Party***
Addl. Standing Counsel

CRLMC No.3397 of 2018

Chandrakanta Sahoo. ***Petitioner***
M/s. P.K. Jena, D.P. Mohapatra,
A. Sahu, Advocates

-versus-

State of Odisha. ***Opposite Party***
Addl. Standing Counsel

CORAM:
JUSTICE S. PUJAHARI

ORDER
22.07.2022

Order
No.

10. 1. These matters are taken up through hybrid mode.
2. All these three applications filed under Section 482 of Cr.P.C. having arisen out of the common order dated

23.10.2017 passed by the learned S.D.J.M., Balasore in C.T. No.2059 of 2014 taking cognizance of offences under Sections 420, 379, 468, 120-B and 409 of IPC and similar question of law and facts being involved, for the sake of convenience, all the three are being heard together and are disposed of by this common order.

3. Heard the learned counsel for the petitioners and the learned counsel for the State.

4. The prosecution allegation reveals that the Block Development Officer, Sadar Block, Balasore reported in writing that on 04.09.2014 having got a telephonic message from the Chief Manager, State Bank of India, Main Branch, Balasore at about 2.30 p.m. regarding receipt of a cheque bearing No.619747 dated 03.09.2014 amounting to Rs.37,50,000/- from BBCC, Balasore, for clearance, he verified the matter, rushed to the Bank and found the cheque to have been issued in favour of one Saroj Kumar Bhoi, GPO. Thereafter, on verification in his office in presence of the staff, namely, Gour Gopal Kamila, Sr. Clerk, Gouranga Chandra Mohanty, Jr. Clerk, Subash Chandra Majhi, Head Clerk and the Block Cashier – Bira Kishore Prusty, he found 70 no. of cheques of different accounts maintained in different banks of the Block Office to be missing. Bira Kishore Prusty, the then Cashier and in-charge of those cheque books stated that the same were missing and he was not in custody of the same. On receipt of a report regarding the incident, the police registered Sahadevkhunta P.S. Case No.327 of 2014 and conducted

investigation. After completion of investigation, charge-sheet was submitted against the accused persons including the present petitioners. Pursuant to such charge-sheet filed, cognizance having been taken for the offences as stated earlier, the petitioners have approached this Court challenging the said order.

5. It is the common submission of the learned counsel appearing for all the petitioners that the learned SDJM has taken cognizance in a mechanical manner without application of judicial mind, inasmuch as in absence of any material showing involvement of the petitioners in the alleged offences, police submitted the charge-sheet against them. It is their further contention that the impugned order has been passed without scrutinizing the materials to find out as to whether or not there is any prima-facie case showing culpability of the petitioners.

6. It is contended by Mr. K. Pradhan, learned counsel appearing for the petitioner in CRLMC No.2365 of 2018 that the petitioner was an employee of the Bank. He on presentation of the cheque for clearance through the accountant sent the same to the accountant for approval and on receipt of approval of the accountant he transmitted the same for collection and, as such, there was no criminality on his part much less any offence of forgery, theft etc. as alleged.

7. It is contended by Mr. P.K. Jena, the learned counsel appearing for the petitioner in CRLMC No.3397 of 2018 that the petitioner, who was an employee of Sadar Block, Balasore,

was transferred to Basta and that he had only introduced Saroj Kumar Bhoi one year before the alleged occurrence, for which for the offence, if any, committed by the said Saroj Kumar Bhoi one year after such introduction, he could not have been made liable in this case. Contention has also been advanced on behalf of the petitioner in CRLMC No.3389 of 2018 that one Laxmidhar Patra who had made attempt to withdraw the cheque, having already stated in his 164 Cr.P.C. that he falsely indicted the petitioner in this case, the Court could not have taken cognizance of the offence against the petitioner who in no way is involved with the offence alleged.

8. The learned counsel for the State, however, drawing notice of this Court to the materials available on record as collected during the time of investigation, would submit that admittedly the cheque, which was in the custody of the Cashier, had been stolen from the Block Office and pursuant to the said unsigned cheque some of the persons made attempt to withdraw huge amount, and could not be successful as the Branch Manager intimated the matter to the B.D.O. for necessary verification. During the course of investigation it has come to the light that the person who was dealing with the clearance of the cheque, submitted the cheque in question to the authority for approval without verification of the identity of the persons and without making any attempt to know whether it had been drawn by the Office or not. Furthermore, the petitioner – Manoranjan Khatua and other persons also identified Bidyadhar Prusty and the very identification was spurious, as revealed

from the materials on record. From the aforesaid, it is prima-facie found that the Bank officials as well as the persons identifying were hand in glove and with an ill-intention he introduced Bidyadhar Prusty for opening the account by spurious documents. So also, the Bank official without scrtunishing the same presented the cheque. So far as the other petitioner is concerned, he has been implicated by a co-accused person. In 164 Cr.P.C. statement it is stated that such a confession was forcibly obtained from him, but the police on due investigation and placing reliance on other materials on record appears to have furnished the charge-sheet for the aforesaid offences indicating all these petitioners and others. In such premises, the submission of the learned counsel for the petitioners that the petitioners have been indicted in the aforesaid case without any material on record whatsoever, is without any substance. Hence, the prayer made is liable to be rejected.

9. Needless to say that the Apex Court in the case of ***Medchl Chemicals & Pharma (P) Ltd. vrs. Biological E. Ltd.***, reported in (2000) 3 SCC 269, held that exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather than a rule, and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution at the threshold. With the lodgment of First Information Report, the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in

accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the Court on perusal of the complaint comes to a conclusion that the allegations leveled in the complaint or charge-sheet on the face of it do not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law. To exercise powers under Section 482 of the Code, the complaint in its entirety will have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But, the offence ought to appear ex-facie on the complaint. The truth or falsity of the allegations would not be gone into by the Court at this earliest stage. Whether or not the allegations in the complaint were true is to be decided on the basis of the evidence led at the trial. So, the question is : Can it be said that the allegations in the complaint do not make out any case against the accused nor do they disclose the ingredients of an offence alleged against the accused or the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion that there is sufficient ground for proceeding against the accused.

10. Here in this case, charge under Section 120-B of IPC is there. Therefore, it is fallacious to say that the offences as stated being prima-facie not found to have been committed by some of the accused persons, the proceeding against them, is misconceived, inasmuch as the question as to nature of offence which an individual accused has committed is a question of charge, to be decided at the time of framing of charge. Hence, when the materials available on record prima-facie disclose the commission of the offences, inasmuch as the cheque was stolen and in connivance with the accused persons a huge amount of public money was attempted to be siphoned, as revealed from the police investigation, the Court at this stage owing to the statements recorded under Section 164 of Cr.P.C. and other statements available on record, cannot examine the truth and veracity of the allegations brought against them so as to take a different view. This Court, therefore, at this stage finds no illegality and infirmity in the impugned order taking cognizance against the petitioners and directing them to be proceeded against. Hence, all the three CRLMCs filed stand dismissed.

11. However, liberty is given to the petitioners to raise all such contentions at the time of framing of charge and the trial Court without being influenced by the reluctance of this Court to interfere with the impugned order of cognizance shall address their contention vis-à-vis the materials on record by scanning the materials as required and permissible at that stage. On such scanning of the materials and addressing the

contentions to be raised, if the learned trial Court finds force in the contentions, there shall be no impediment on its part to discharge them, notwithstanding the order passed hereby pertaining to the impugned order of cognizance.

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

(S.Pujahari)
Judge

MRS

