

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 1259 of 2020

Jaga Rout @ Chita Ranjan Rout

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Petitioner

*Mr. S.K. Gadanayak, Adv.
on behalf of Mr. G.K. Mohanty, Adv.*

Vs.

State of Odisha & Another

.....

Opposite Parties

Mr. D.K. Mohanty, A.S.C.

CORAM:

JUSTICE SAVITRI RATHO

ORDER

28.10.2022

Order No.

02.

(Through hybrid mode)

1. In this application under section 482 of the Code of Criminal Procedure, the order dated 05.09.2017 passed by the learned J.M.F.C., Ranpur in G.R. Case No.171 of 2015 arising out of Ranpur P.S. Case No. 172 of 2015, taking cognizance of offences under Sections 457/395 of IPC have been challenged.
2. Mr. S.K. Gadanayak, learned counsel for the petitioner referring to the FIR submits that the FIR has been filed on 11.07.2015 alleging that on the same day at about 1.30 p.m., the present petitioner along with three others had broken upon the lock of the house of the informant, assaulted his wife, taken away a sum of Rs.22,000/-, gold necklace, other ornaments and a mobile phone. He further submits that after investigation, charge sheet dated 29.08.2017 has been filed against the petitioner and one Tula @ Shraban Barik for commission of offences under Section 457/395 of IPC. Chargesheet under Section 395 of IPC could not have filed as only two persons are stated to be involved in the case and there is no mention in the charge sheet that five or more persons committed or attempted to commit the offence.

3. At this juncture, it would apposite to refer to Section 391 of the IPC which defines the offence of dacoity which is punishable under Section 395 of the IPC:-

“Section 391 of IPC - When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

4. Since the offence of dacoity necessarily requires the involvement of five or more persons and in the present case only two persons have been charge sheeted and in the FIR allegations have been made against four persons only, the learned J.M.F.C. could not have taken cognizance of the offence under Section 395 of IPC against the petitioner.

5. Considering the fact that five years have elapsed since the order of cognizance was passed and more than two years since filing of the CRLMC, liberty is granted to the petitioner to raise all these points at the time of framing of charge or if the charge has already been framed, then during the course of trial, which will consider in accordance with law by the learned trial court.

6. The CRLMC is disposed of with the aforesaid observations.
Issue urgent certified copy as per rules.

Sukanta

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(SAVITRI RATHO)
JUDGE