

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMP No.1423 of 2022

Aman Dixit

....

Petitioner

Mr. S. Mohanty, Advocate

-versus-

State of Odisha

....

Opp. Party

Mr. Manoranjan Mishra

Addl. Standing Counsel

**CORAM:
JUSTICE S.K. SAHOO**

**ORDER
13.09.2022**

Order No.

01.

This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Heard Mr. S.Mohanty, learned counsel for the petitioner and Addl. Standing Counsel for the State.

In this application under Article 227 of the Constitution of India, the petitioner Aman Dixit has challenged the order dated 12.08.2021 passed by the learned S.D.J.M., Jharsuguda in C.T. Case No.3217 of 2020 in taking cognizance of offences under sections 294/507/506/34 of the Indian Penal Code and issuing process against him.

Learned counsel for the petitioner submitted that in the case in hand, the first information report was lodged by one Debabrata Mishra before the Inspector-in-charge of Brajarajnagar police station on 10.12.2020 and

accordingly, Brajarajnagar P.S. Case No.490 of 2020 was registered under sections 294/507/506/34 of the Indian Penal Code against four accused persons including the petitioner but on completion of investigation, the Investigating Officer found prima facie evidence under sections 294/507/506/34 of the Indian Penal Code against the accused Susmita Mishra, Supriti Mishra @ Tunu, Supriya Dixit and the petitioner was not charge sheeted and however on receipt of the charge sheet, the learned Magistrate without giving any reason and verifying as to what are the materials available on record against the petitioner, has been pleased to issue process against him in a mechanical manner after taking cognizance of the offences.

Learned counsel for the petitioner submitted that the impugned order passed against the petitioner suffers from non-application of mind and the ingredients of the offences are not attracted and therefore, the impugned order should be quashed so far as the petitioner is concerned.

Learned counsel for the State, on the other hand, opposed the prayer made in the petition and supported the impugned order and contended that the learned Magistrate is empowered to take cognizance of offence and issue process against the accused who has not been charge sheeted if he finds materials against him in the case records.

There is no dispute that in the first information report, the name of the petitioner finds place. However,

during course of investigation, the Investigating Officer found materials only against the three co-accused persons, namely, Susmita Mishra, Supriti Mishra @ Tunu and Supriya Dixit but found no material against the petitioner to submit charge sheet for which he was not charge sheeted.

In the case of **M/s. India Carat -Vrs.- State of Karnataka reported in A.I.R. 1989 S.C. 885**, it has been held as follows :

“upon receipt of a police report under section 173(2), a Magistrate is entitled to take cognizance of an offence under section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under section 190(1)(b) and direct the issue of process to the accused.”

In view of the ratio laid down in the aforesaid case, though there is no bar for the learned Magistrate to proceed against the petitioner who was a non-charge sheeted accused but in such a case, the Magistrate is

required to give reasons by applying his mind independently, to the facts emerging from the investigation that there are prima facie materials against the petitioner which makes out the offences under sections 294/507/506/34 of the Indian Penal Code. The same has not been done in this case and it appears that impugned order has been passed against the petitioner in a mechanical manner. Therefore, the impugned order so far as the petitioner is concerned is not sustainable in the eye of law and accordingly, the impugned order dated 12.08.2021 passed by the learned S.D.J.M., Jharsuguda in C.T. No.3217 of 2020 in taking cognizance of offences and issuance of process against the petitioner stands quashed.

It is made clear that this Court not expressed any opinion on the three co-accused persons namely, Susmita Mishra, Supriti Mishra @ Tunu and Supriya Dixit.

The CRLMP is allowed.

Urgent certified copy of this order be granted.

(S.K. Sahoo)
Judge