

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2582 of 2018

Gajananda Ray and others ***Petitioners***

-versus-

State of Odisha ***Opposite Party***

CORAM: JUSTICE S. PUJAHARI

ORDER

15.02.2022

Order

No.

05.

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 10th May, 2018 passed by the learned S.D.J.M., Bonai in G.R. Case No.705 of 2017, taking cognizance of the offences under Sections 341, 323, 307, 379, 506 read with Section 34 of the I.P.C.
3. Heard the learned counsel for the Petitioners and the learned counsel for the State.
4. The facts relevant for disposal of this Criminal Misc. Case is that the Petitioners have been implicated in Lahunipara P.S. Case No.181 of 2017 registered under Sections 341, 323, 379, 506 read with Section 34 of the I.P.C. which ultimately after due investigation, charge sheet filed against the Petitioners for the offences under Section 341, 323, 506 read with Section 34 of the I.P.C., but the court below vide impugned order dated 10th May, 2018 added the charge under Section 307 of the I.P.C. to the aforesaid offences against the Petitioners. The court below while taking cognizance besides the offences alleged

finding fault of the Investigating Officer on relying certain documents on the application of the Informant took cognizance of the offence under Section 307 of the I.P.C. read with Section 34 of the I.P.C. besides the offences for which they had been challaned.

5. Learned counsel for the Petitioners would submit that the Court had no occasion to rely on the documents produced by the Informant at the stage of taking cognizance, particularly finding fault with the investigation and placing reliance certain documents produced by the Informant, so also on the application of the learned A.P.P. There is no manner of doubt that the Court while taking cognizance is not bound by the opinion formed by the police while submitting final form under Section 173 of Cr.P.C. The Court at this stage even can take cognizance of offences for which the accused persons have not been charge sheeted if the materials collected during the investigation reveals the same or if some offences alleged have not to have been committed by the police. The aforesaid position of the law has since been well settled in the cases of *Abhinandan Jha and others v. Dinesh Mishra, reported in AIR 1968 SC 117*. So also in the case of *Bhagwant Singh v. Commissioner of Police and another, reported in AIR 1985 SC 1285*, on a protest made against such left out offences after examining the complainant and others, documents produced by the Informant-Victim can take cognizance of the offences. But holding that there was some manipulation during the time of investigation and, as such, the accused are also liable to be proceeded under Section 307 of I.P.C. that too placing reliance on the medical papers produced by the so called Informant was not proper.

6. Therefore, this Court is set aside the order of cognizance taken and remit back the matter to the learned S.D.J.M., Bonai to readdress the order of cognizance in the light of law laid down as aforesaid.

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

(S. Pujahari)
Judge

DA

