

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.331 of 2022

- 1. Abhisek Acharya**
 - 2. Biswaranjan Badajena**
 - 3. Rashmi Ranjan Muduli**
@ Bapi
 - 4. Jugajyoti Swain**
 - 5. Bibhuti Bhusan Prusty**
@ Kalu
 - 6. Balaram Khuntia @**
Balia
 - 7. Kunu @ Rakesh Kumar**
Jena
 - 8. Bhimsen Nayak @ Bapi**
 - 9. Ajay Behera @ Pachila**
 - 10. Biswapawan Behera**
 - 11. Biswajit Parida**
 - 12. Abhisek Nayak**
 - 13. Srichandan**
Sibaprasad
 - 14. Sk. Raja**
 - 15. Abhijit Bhanja**
 - 16. Ch. Jagdish**
- Petitioners**

Mr. Arun Kumar Nayak,
Advocate

-versus-

State of Odisha **Opp. Party**

Mr. Manoranjan Mishra
Addl. Standing Counsel

CORAM:
JUSTICE S.K. SAHOO

ORDER
02.08.2022

Order No.

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

Heard Mr. Arun Kumar Nayak, learned counsel appearing for the petitioners and Mr. Manoranjan Mishra, learned Additional Standing Counsel for the State of Odisha.

This revision petition has been filed by the petitioners challenging the order dated 27.06.2022 passed by the learned Special C.J.M. (CBI), Bhubaneswar in Criminal Trial No.71 of 2020 in rejecting the discharge petition filed by the petitioners under section 227 of Cr.P.C.

The first information report was lodged on 10.02.2018 before the Inspector in-charge, Capital police station by one Dusmanta Kumar Das, the security guard in the quarters of Mr. V.K. Pandian, I.A.S., Private Secretary to the Hon'ble Chief Minister of Odisha in which it is stated that on that day at about 10.00 a.m., while he was in his duty in the house of Mr. Pandian, some persons came with TV camera and boom and gave their identity as the reporters of OTV and they told that they had come for

interview of Mr. Pandian. The informant told them that Mr. Pandian was not available in the quarters and asked them to come later. After sometime hearing hulla near the gate, the informant came out of the guard room and found thirty to forty persons kicked the main gate and barged in to the premises holding flags of a political party. The two persons who had earlier came and identified themselves as camera man and the reporter of OTV also entered inside the premises with them and when the informant protested the miscreants, they abused him in obscene languages and started throwing the flower pots aiming at the glass pan of the quarters. They also damaged the motorcycle and some of them caught hold of the throat of the informant and dragged him into the guard room. They pressed his throat as a result of which the informant felt suffocated. Then the trespassers asked the informant about Mr. Pandian and also told him naming two politicians of a particular political party to have asked them to do such activities so that Mr. Pandian would be compelled to quit Odisha for Tamil Nadu. The informant with much difficulty managed to escape from the clutches of the miscreants and came out of the

guard room. The culprits caught hold of the informant and forced him to raise slogans in support of the two politicians by holding party flags. When hearing such hulla, people gathered at the spot, the culprits and the OTV people left the quarters giving threat and using obscene languages.

On the basis of such report, Capital P.S. Case No.52 of 2018 was registered against the unknown persons for commission of offences under sections 147/294/452/307/427/353/323/506/149 read with section 120-B of the Indian Penal Code.

During course of investigation, statements of the witnesses were recorded, seizures were made from the spot, letters were issued to the different news channels, who broadcasted the incident requesting them to provide the video clips of the incident with a certificate in compliance to section 65B of the Indian Evidence Act. The video clips in C.D. with seal and signature and their forwarding reports were received from the competent authority of different news channels. The camera man, reporters and authorities, who provided the video clips were examined and their statements were also recorded.

On completion of investigation, as prima facie case was found against the petitioners, charge sheet was submitted under sections 147/452/455/294/353/189/152/307/323/506/427/149/120-B/34 of the Indian Penal Code.

The petitioners filed a discharge petition before the learned trial Court and after hearing the learned counsel for the petitioners so also the learned counsel for the State, the learned trial Court has been pleased to hold that it is the difficult that the charge against the accused persons is groundless without the scrutiny of evidence on record at that stage and accordingly, rejected the discharge petition.

Learned counsel for the petitioners contended that a false case has been foisted on account of political rivalry and the ingredients of the offence under section 307 of the Indian Penal Code are not attracted and no specific overt act has been alleged against any of the petitioners and the witnesses examined are mostly official witnesses and no independent witness has stated about the incident. He further submitted that another first information report was lodged at the instance of one Shri Markand Mishra, S.I. of

Police, Capital police station and a completely different version of the incident has been mentioned therein. It is argued that the continuance of the criminal proceeding against the petitioners would be an abuse of process of Court and therefore, the learned trial Court was not justified in rejecting the petition filed by the petitioners for discharge. Learned counsel has filed the certified copy of the first information report, statements of the witnesses and copy of the charge sheet, which are taken on record.

Learned counsel for the State, on the other hand, supported the impugned order and contended that when number of witnesses examined during investigation have implicated the petitioners to be the participants in the occurrence, the manner in which the crime has been committed, the unauthorized entry of the petitioners into the residential quarters of the Private Secretary to the Hon'ble Chief Minister and the overt act committed by the petitioners clearly makes out prima facie case against them. It is argued that at this stage, meticulous examination of the evidence on record is not warranted and the truth, veracity and the effect of the evidence of

the prosecution case is to be adjudicated at the appropriate stage of trial and therefore, the revision petition should be dismissed.

In the case of **Asian Resurfacing of Road Agency Pvt. Ltd. and Another -Vrs.- Central Bureau of Investigation reported in (2018) 16 Supreme Court Cases 299**, it has been held that while dealing with provisions of section 227 of Cr.P.C., the Court at the stage of framing of the charge has to apply its mind to the question whether or not there is ground for presuming the commission of an offence by the accused. The Court has to see as to whether the material brought on record reasonably connect the accused with the offence. Nothing more is required to be enquired into. The test of prima facie case is to be applied. The challenge against an order of framing charge in exceptional situation for correcting a patent error of lack of jurisdiction which has to be limited to rarest of rare cases.

In the case of **Hardeep Singh -Vrs.- State of Punjab reported in (2014) 3 Supreme Court Cases 92**, it has been held that at the stage of framing of the

charge, the Court has to apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. The test of prima facie case is to be applied and the Court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the Court to proceed against the accused further.

In case of **Amit Kapoor -Vrs.- Ramesh Chander reported in (2012) 9 Supreme Court Cases 460**, it is held as follows:-

"19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.

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20. The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or

proprietary of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily....."

The object of discharge under section 239 of Cr.P.C. is to save the accused from unnecessary and prolonged harassment. When the allegations are baseless or without foundation and no prima facie case are made out, it is just and proper to discharge the accused to prevent abuse of process of the Court. If there is no ground for presuming that accused has committed an offence, the charges must be considered to be groundless.

The ground may be any valid ground including the insufficiency of evidence to prove the charge. When the materials at the time of consideration for framing the charge are of such a nature that if unrebutted, it would make out no case whatsoever, the accused should be discharged.

The contention raised by the learned counsel for the petitioners that another first information report was lodged relating to the occurrence in which the informant of the said F.I.R. has presented in different version is to be brought on record at the stage of trial in accordance with law and if the defence brings to the satisfaction of the learned trial Court at that stage that the prosecution case is not believable in view of different versions relating to the occurrence is coming forward and therefore, the implication of the petitioners is doubtful, the learned trial Court shall deal with it in accordance with law at appropriate stage. At this stage, comparing the narration made in another first information report relating to the occurrence is not permissible. It cannot be said that this case is a false one and on account of political rivalry, the

case has been foisted against the petitioners. Whether the statements of the prosecution witnesses would be accepted or discarded is to be decided by the learned trial Court. Once the facts and ingredients of the sections exist, then the Court would be right in presuming that there is ground to proceed against the accused and frame charge accordingly. A strong suspicion is sufficient for framing charges, which must be founded on some material. The veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged at that stage nor the Court is to consider whether there is sufficient ground for conviction of the accused or not.

After going through the case records minutely particularly the statements of the witnesses, the seizures in the case, it cannot be said that there is absence of prima facie material against the petitioners. The learned trial Court has also found that there are materials available in the case record that on 10.02.2018 at about 10.00 a.m., the petitioners entered into the official residential quarters of Mr. V.K. Pandian raising hulla and assaulted the security guard, abused the informant in

filthy language, damaged the flower pots so also glass pans of the quarters and the motorcycle and seizure of those damaged articles were made.

In my humble opinion, the learned trial Court has rightly rejected the discharge petition filed by the petitioners and therefore, I find no cogent reason to interfere with the same.

Accordingly, the CRLREV stands dismissed.

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

(S.K. Sahoo)
Judge

I.A. No.446 of 2022

02. In view of the order passed today in CRLREV No.331 of 2022, this I.A. is also disposed of.

(S.K. Sahoo)
Judge