

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2051 of 2022

Muna @ Dasmal Tudu.

....

Petitioner

-versus-

State of Odisha.

....

Opposite Party

CORAM: JUSTICE S.PUJAHARI

ORDER

12.08.2022

Order No.

01.

1. This matter is taken up through Hybrid mode.
2. The petitioner in this application under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") has prayed for quashing of the order dated 17.09.2011 passed by the learned S.D.J.M.(S), Cuttack in G.R. Case No.304 of 2011 taking cognizance of the offences under Sections 341, 323, 294, 354 and 506/34 of IPC.
3. Heard the learned counsel for the petitioner and the learned counsel for the State.
4. Learned counsel for the petitioner submits that no overt act has been played by the petitioner in this case and some of the witnesses have also not whispered the name of the present

petitioner. Since a set of witnesses indicted the petitioner and another set of witnesses having not indicted him, coupled with the fact that in the F.I.R. no whisper has been made against the petitioner by the victim, the impugned order of cognizance as well as the entire proceeding is liable to be quashed.

5. On the other hand, the learned counsel for the State submits that since some of the witnesses have categorically stated that the present petitioner along with others have also played overt act in this case, this Court should be loathed in interfering with the impugned order.

6. Needless to say that the F.I.R. is not the be all and all of a case. Even if a person is not named in the FIR, during the investigation if any incriminating materials come against him indicating his involvement in commission of the offence, he can very well be challaned by the police and on scrutiny if the Court finds the challan so submitted against him have substance, there is no impediment to proceed against him after taking cognizance on such police report. Furthermore, at this stage, the Court is not required to examine the truthfulness or the veracity of the version of the witnesses. It can simply sift materials in police report to find out commission of any offence and if that be so, then whether the person who has been challaned, has any role to play in such offence if answer is in affirmative, the Court has to take cognizance of the offence and proceed against the person indicted in such offence. The

aforesaid being the settled position of law, the prayer made by the petitioner to quash the order of cognizance as well as the proceeding on the ground stated, therefore, is devoid of merit.

7. However, this Court observes that since the consideration of framing of charge and taking of cognizance are quite distinct and different, if the petitioner makes any submission at the time of framing of charge that no material is there to proceed against him, the Court concerned shall decide the same in the manner known to law without being influenced by this order.

8. With the aforesaid order, this CRLMC stands disposed of being dismissed.

(S. Pujahari)
Judge

MRS