

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2227 of 2022

Prasanna Kumar Sahoo

.... **Petitioner**

Mr. S.R. Mulia, Advocate

-Versus-

State of Odisha

.... **Opposite Party**

Mr. S.K. Mishra, ASC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

17.10.2022

Order
No.
04.

1 Heard learned counsel for the petitioner and learned counsel for the State.

2. Instant petition under Section 482 Cr.P.C. is filed by the petitioner assailing the order of cognizance dated 17th March, 2022 passed in G.R. Case No.60 of 2022 corresponding to Mangalabag P.S. Case No.10 of 2022 by the learned J.M.F.C.(City), Cuttack on the grounds stated therein.

3. Mr. Mulia, learned counsel for the petitioner submits that the learned court below could not have passed the order of cognizance in respect of the offences punishable under Sections 22 and 23 of the PC & PNDT Act, 1994 on the strength of chargesheet when the statutory requirement is that for such offence complaint is required to be filed in terms of Section 28 of the said Act.

4. In fact, an FIR was drawn by the informant later to which Mangalabag P.S. Case No.10 dated 17th January, 2022 was registered under Sections 419, 420 read with 34 IPC and Sections 22 and 23 of the PC & PNDT Act.

5. It is contended that for offences under the PC & PNDDT Act, a complaint was required to be filed as per and in accordance with Section 28 of the said Act and therefore, the learned court below committed an illegality in taking cognizance of the offences under Sections 22 and 23 of the said Act on the strength of chargesheet.

6. In fact, as per Section 28 of the said Act, a Court shall not take cognizance of any offence under the said Act except by a complaint filed by authority concerned or any other officer authorized by the State Government or the Central Government as may be or the Appropriate Authority in that regard. In view of above provision whereby complaint is to be filed for the offences under the PC & PNDDT Act though the offences are cognizable in nature and investigation can be taken up but at the end for the purpose of criminal prosecution, complaint is to be filed in terms of Section 28 thereof.

7. Admittedly, in the present case, there is no complaint filed for the offences under the PC & PNDDT Act.

8. After the FIR was lodged and investigation concluded chargesheet was submitted, whereupon, the learned court below took cognizance of the offences which in the considered view of the Court could not have passed any such order under Annexure-3 which is not in compliance of Section 28(1) of the PC & PNDDT Act and therefore, to that extent the order is to be set aside.

9. Accordingly, it is ordered.

10. In the result, CRLMC stands allowed. Consequently, the impugned order dated 17th January, 2022 passed in G.R. Case No.60 of 2022 by the learned J.M.F.C.(City), Cuttack is set aside to be extent indicated herein above. It is made clear that the proceeding shall continue in respect of the IPC offences for which

the petitioner has been chargesheeted. However, the Appropriate Authority shall have the liberty to file complaint in terms of Section 28 of the PC & PNDT Act for the offences under the said Act.

11. Consequently, the CRLMC stands disposed of.

12. An urgent certified copy of this order be granted as per rules.

(R.K. Pattanaik)
Judge



TUDU