

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 3179 of 2016

AFR

In the matter of application under Section 482 of the Criminal Procedure Code, 1973.

Binod Bihari Dash Petitioner

-Versus-

State of Orissa and another Opp. Parties

For Petitioner : Mr. A.P. Bose, Advocate

For Opp. Parties : Mr. P.K. Pattnaik, A.G.A.
[O.P. No. 1]

Mr. P. Nanda [O.P. No.2]

P R E S E N T:

HONOURABLE MR. JUSTICE G. SATAPATHY

Date of hearing: 15.11.2022: Date of judgment: 29.11.2022

G.SATAPATHY, J. The Petitioner by way of this application U/S. 482 Cr.P.C challenges the order passed on 19.09.2016 by learned J.M.F.C., S.Rampur in 1CC Case No. 08 of 2016 taking cognizance of offences punishable Under Sections 466/468/471/477-A of the IPC.

2. The short facts involved in this case are O.P No.2 instituted the complaint in 1CC No. 08 of 2016 in the Court of J.M.F.C., S. Rampur against the Petitioner and others for aforesaid offences by stating in the complaint that the accused No.1 Himanshusekhar Biswal, while filing his nomination in Zilaparisada Election, 2012 had furnished affidavit disclosing therein self-acquired property to an extent of Acre 4.233 decimals, Acre 0.456 decimals and Acre 2.758 decimals in Fatamunda, Dunguripali and Sahala Mouzas respectively. It is also stated in the complaint that the accused No.2 Pamini Biswal in her affidavit had shown lands to an extent of Acre 0.710 decimals, Acre 7.639 decimals and Acre 1.00 decimals in Dungurupali and Sahala Mouzas respectively. Further, the complaint also discloses that the accused No. 1 Himanshusekhar Biswal has 3.00 Acres of land in Dunguripali Mouza with his two brothers and joint family property of Acre 8.555 decimals in Dunguripali, out of which accused No.1's share will be more than 2.00 Acres and thereby, the accused has more than 18.00 Acres of

land and it is the duty of the Petitioner and one Jairaj Bariha being the Tahasildar of S.Rampur and Prasanna Pandey, R.I of Dunguripali to initiate ceiling proceeding against Himanushu Biswal without any delay, but the Petitioner in connivance with other accused persons had not initiated any ceiling proceeding, even on the request of O.P No.2-cum-complainant. It is further stated in the complaint that R.I Dunguripali (accused No.4) had fabricated report and records to classify most of the lands of accused Nos. 1 & 2 as Class-II lands to protect accused Nos. 1 & 2 from divesting surplus land as ceiling surplus.

On receipt of the complaint, learned J.M.F.C S.Rampur recorded the initial statement of the complainant and the statement of another witness namely Balistha Pradhan. Further, on perusal of complaint together with initial statement and statement of witnesses, the learned J.M.F.C., S.Rampur finding prima facie case took cognizance of the aforesaid

offences by the impugned order. Hence, this CRLMC by the Petitioner.

3. In the course of hearing of the CRLMC, Mr. A.P. Bose, learned counsel for the Petitioner submits that the learned Magistrate has taken cognizance of offences mechanically without following the due procedure of law, but the Petitioner is a Government Servant and the act alleged against him is reasonably connected with discharge of his official duty and therefore, without valid sanction obtained against the Petitioner, the Courts should not have taken cognizance of offences. It is also submitted that the Petitioner was the Tahasildar at the relevant point of time and he was alleged to have failed to initiate ceiling proceeding against the co-accused and, thereby, he was in active connivance with co-accused to avoid the ceiling proceeding against the co-accused persons, but the Petitioner had not only discharged his duty but also had not neglected in initiating proceeding against the co-accused under OPLE Act. It is, accordingly,

contended that the accused was never negligent in his duty. Further, learned counsel for the Petitioner has also filed the certified copy of the order passed by the Tahasildar, S.Rampur in EC No. 54 of 2016 and certified copy of order passed on 10.05.2017 by sub-collector, Sonapur in Encroachment Appeal Case No. 71 of 2016 in support of his contention that the Petitioner was never negligent in his duty and he had taken steps against co-accused and thereby, the act of the accused cannot constitute any offence for which the complaint needs to be quashed.

4. On the other hand, Mr. P. Nanda, learned counsel for the O.P. No. 2 submits that the documents filed today are created for the purpose of this case and thereby, no reliance can be placed on those documents to indicate that no offence was committed by the Petitioner. It is, however, submitted that the Petitioner was not only negligent but also had entered into conspiracy with co-accused to facilitate them the benefits under OLR Act

and, thereby, the Petitioner has committed the offences. It is accordingly prayed by him to dismiss the CRLMC.

5. On bestowing a careful and anxious consideration to the rival submissions, it undisputedly appears that the Petitioner's challenge to the impugned order is on two folds.

"(i) The impugned order is unsustainable for want of sanction against the Petitioner, and

(ii) The acts alleged against the Petitioner do not constitute any offence."

6. Adverting to the first contention, undeniably the Petitioner was the Tahasildar, S. Rampur at the relevant point of time. A bare perusal of the complaint would go to indicate that the Act alleged against him is not only reasonably connected with due discharge of his duties but also the same are matters relating to exercise of power by the Authority concerned under OLR Act, since it was alleged against the Petitioner inter-alia for conniving with co-accused Himanshusekhar Biswal and Pamini

Biswal for not initiating ceiling proceeding against them so as to facilitate them for ceiling surplus land which is against law. It can never be disputed that initiation of ceiling proceeding is coming under the OLR Act and thereby, such act has to be discharged by the competent Authority as prescribed by the said Act. It is, therefore, very clear that the act alleged against the Petitioner is not only reasonably connected with due discharge of his duties but also it is directly coming under the provisions of OLR Act vesting such power to be exercised by the competent Authority. Once the act alleged against the Petitioner is found to be coming under in due discharge of his official duty, the impunity from criminal prosecution would automatically get attracted and such officer cannot be prosecuted without obtaining any valid sanction from the Competent Authority, which is condition precedent to take cognizance of offence for the acts complained of in terms of Section 197 Cr.P.C.

7. Previous sanction as contemplated U/S. 197 Cr.P.C. is a protection to the officers from false and vexatious prosecution. Section 197 Cr.P.C. mandates that when any person who is or was a Judge or a Magistrate or a Public Servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Courts shall take cognizance of such offence except with the previous sanction of the Competent Authority. In the present case, especially when no prior sanction has been accorded/obtained against the Petitioner and Jairaj Bariha, the R.I. of Dunguripali and Prasanna Pande, the Tahasildar, Tarbha and when the acts alleged against these three accused persons are definitely connected with the discharge of their official duties, the Court should not have taken cognizance of offences and issued process against these three persons accused of offences. It is, therefore, clear that the impugned order together with issuance of summon

against the Petitioner and the accused R.I., Dunguripali and Tahasildar, Tarbha is unsustainable in the eye of law.

8. It was alleged against the Petitioner, R.I., Dunguripali and Tahasildar, Tarbha that they have acted in connivance with other co-accused persons and, thereby, facilitated the other co-accused persons to enjoy ceiling surplus land by manufacturing documents and, therefore, the allegations against the Petitioner and two officers are for entering into conspiracy with co-accused persons, but neither the complaint nor the complainant in his initial statement nor the witnesses in enquiry could able to state the act of conspiracy against the Petitioner and two Government officials except stating a bald statement in the complaint that the above accused in connivance with other accused did not initiate ceiling proceeding against co-accused. A bare perusal of the complaint would go to indicate the act alleged against the Petitioner and two others Government officials amounts to negligence in their official duty at best which can be

redressed on Administrative side, if established by the complainant, but such acts complained of against the Petitioner and two Government officials never constitutes any offence since it is alleged against them for not initiating ceiling proceeding in connivance. It is therefore, clear that the ingredients of offences under which cognizance was taken are lacking against the Petitioner and two other Government officials, rather if established, such act complained of against them would at best amount to negligence in discharge of duties which can be dealt with by the Authorities in Administrative side, but by no stretch of imagination, the act complained of against the Petitioner and two other Government officials would constitute any offence. Hence, the complaint does not disclose commission of any offence against the Petitioner and two other Government officials. However, since there are allegations against Accused nos. 1 and 2 for filing affidavit suppressing some information by way of some documents, this Court refrains itself from entering into the arena of appreciation of evidence and

documents which is left open to the learned Court in seisin of the case.

9. According to the scheme of Section 482 Cr.P.C., there are three grounds under which a criminal proceeding can be quashed and the said grounds are:-

- (i) *To give effect to an order under the Cr.P.C.*
- (ii) *To prevent the abuse of process of court.*
- (iii) *Otherwise to secure the ends of justice.*

Although, the inherent jurisdiction of High Court under Section 482 Cr.P.C. is wide, but it has to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. However, the inherent power should not be exercised to stifle a legitimate prosecution, but at the same time, the Court should not hesitate to exercise such powers when it is brought to its knowledge that the criminal prosecution has been used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused. At the same time, the Court

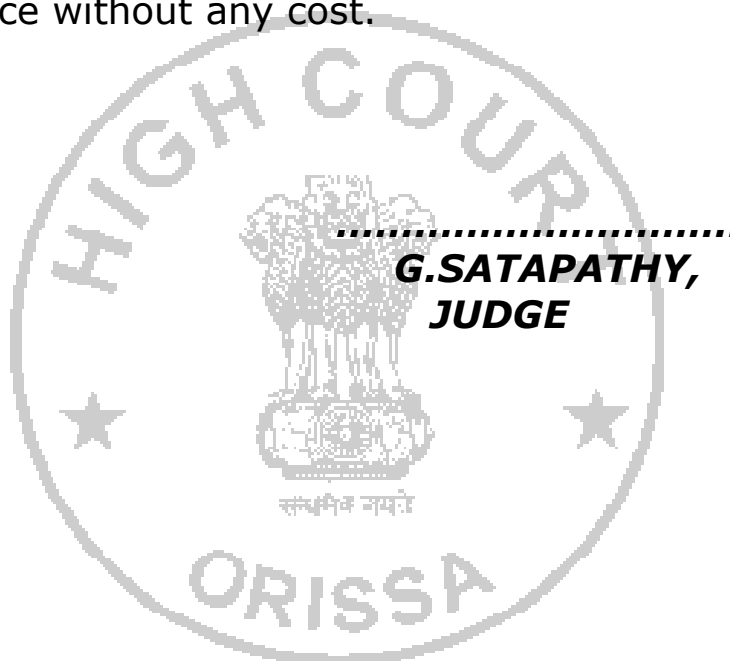
should not form any prima facie decision or opinion in a case where the entire facts are incomplete and hazy and more so, when the evidence has not been collected and produced before the Court. What would be the test to be applied by the Court to quash a prosecution at the initial stage has been well elucidated by the Apex Court in ***Madhavrao Jiwajiraoscindia and others Vrs. Sambhajirao Chandrojirao Angre and others (1988); 1 SCC 692*** wherein it has been held that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. In this case, on cumulative assessment of facts and analysis of law would go to indicate that the act complained of against the Petitioner is related to due discharge of his official duties and also does not constitute any offence against the Petitioner, nonetheless the same benefit also accrues in favour of the R.I., Dunguripali and Tahasildar, Tarbha who have been arrayed as accused in the complaint on self same

allegation, which is left open to the Court of original jurisdiction to take a call on it. In this case at hand, since cognizance has been taken by the impugned order without obtaining any valid sanction against the Government officials including the Petitioner in violation of Section 197 Cr.P.C. and besides the Government officials, two private individuals have been arrayed as an accused, the impugned order dated 19.09.2016 taking cognizance of offences is hereby set aside, but it is left open to the Court to take decision against other co-accused persons by passing an order afresh after taking into consideration the facts, documents and materials on record and issue process if required against any of the accused persons.

10. In the present scenario, the impugned order is not only unsustainable in the eye of law for want of valid sanction against the Petitioner but also the criminal proceeding against the Petitioner is nothing but an abuse of process of Court, and to secure the ends of justice, the impugned order as well as the criminal proceeding

against the Petitioner is required to be quashed. Hence, the impugned order together with summoning of the Petitioner and consequently, the criminal proceeding against the Petitioner are hereby quashed.

Resultantly, the CRLMC is allowed on contest to the extent indicated in the preceding paragraph, but in the circumstance without any cost.



***Orissa High Court, Cuttack
The 29th November, 2022, Priyajit***