

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2268 of 2022

Bijay Ku. Sundara

....

Petitioner

Mr. R.K. Pattanaik, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. S. Mishra, ASC

CORAM:

MR. JUSTICE R.K. PATTANAIAK

ORDER

25.11.2022

Order
No.

03.

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

2. Prayer in the present case is for quashing of the order of cognizance dated 5th July, 2021 passed in T.R. Case No.14(A) of 2021 corresponding to Jankia P.R. No.107 of 2021 pending in the file of the learned 2nd Additional Sessions Judge-cum-Special Judge under NDPS Act, Khurda on the grounds stated therein.

3. It is submitted by Mr. Pattanaik, learned counsel for the petitioner that the other accused, who faced the trial in T.R. Case No.14 of 2021, has been acquitted of the charges by a judgment dated 7th July, 2022 of the learned 2nd Additional Sessions Judge, Khurda. In support of such contention, Mr. Pattanaik refers to Anenxure-3, a copy of the judgment of the learned Sessions court. It is further submitted since the principal accused, who was alleged to be in possession of contraband substance has been acquitted of the charge, the petitioner who happens to be the owner of the vehicle which was seized in connection with the case having no criminal antecedent as well as incriminating material on record against him should not be subjected to trial. It is claimed that the petitioner's

involvement is on account of suspicion since his vehicle was seized being used by the other accused and considering the same, the criminal proceeding which is pending before the learned Special court should be brought to an end and quashed in exercise of the Court's inherent jurisdiction under Section 482 Cr.P.C.

4. Mr. Mishra, learned counsel for the State on the other hand submits that there was a local enquiry held from which it was ascertained that the petitioner did have acquaintance with the principal accused, however, he fairly concedes that there is no incriminating material on record to show and suggest that he too involved in alleged transportation of the contraband substance at the relevant point of time or in any way in connivance with the other accused did the alleged mischief.

5. In fact, the Court finds that the other accused faced trial in T.R. Case No.14 of 2021 which ultimately ended in acquittal by a judgment of the learned 2nd Additional sessions Judge, Khurda in T.R. Case No.14 of 2021. The involvement of the petitioner is solely on the ground that he is the owner of the seized Yamaha bike bearing registration No.OD-02-AZ-3221 found to be used during the incident and also his acquaintance with the other accused. Mr. Pattanaik, learned counsel for the petitioner submits that no one claimed the custody of the motor vehicle and as such, no disposal order has been passed by the learned Session court while dealing with T.R. Case No.14 of 2021.

6. Since there is no incriminating material drawn to the attention of the Court from the side of the State except by claiming that the petitioner was the owner of the alleged vehicle and having acquaintance with the other accused, the Court is of the view that solely on such ground, he cannot be criminally prosecuted unless supported by any incriminating material. That apart, the principal

accused from whom the alleged seizure of the contraband substance was made has been exonerated of the charges after a full-fledged trial and judgment in T.R. Case No.14 of 2021. Under the above circumstances, this Court is of the view that due to want of sufficient evidence being brought to the notice of the Court, any continuation of proceeding vis-à-vis the petitioner should be an abuse of process of law. It is also of the conclusion that no fruitful purpose would be served to subject the petitioner to a full blown trial in absence of any specific material showing his involvement in the alleged illicit possession or transportation of contraband brown sugar. No doubt the quantity is commercial in nature but then, it was being recovered from other accused, who ultimately obtained an order of acquittal and absence of any direct or circumstantial evidence to show involvement of the petitioner, the court is of the final opinion that the proceeding as against him should be quashed in exercise of inherent jurisdiction.

7. Accordingly, it is ordered.

8. In the result, CRLMC stands allowed. Consequently, the criminal proceeding in T.R. Case No.14(A) of 2021 corresponding to Jankia P.R. No.107 of 2021 pending in the file of learned 2nd Additional Sessions Judge-cum-Special Judge under NDPS Act, Khurda is hereby quashed.

9. Urgent certified copy of this order be granted as per rules.

(R.K. Pattanaik)
Judge

TUDU