

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2808 of 2019

Dharmendra Mallick @ Malik.

Petitioner

*M/s. S.K. Dash, A.K. Otta, S. Das,
A. Sahoo, S. Mohanty, Advocates*

-versus-

State of Odisha & another.

Opposite Parties

*Addl. Standing Counsel – For O.P. No.1-State
Mr. Sidheswar Mohanty – For O.P. No.2*

**CORAM:
JUSTICE S. PUJAHARI**

**ORDER
17.08.2022**

**Order
No.**

05. **1.** This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) seeking for quashing of the order dated 16.09.2019 passed by the learned S.D.J.M., Karanjia in I.C.C. No.57 of 2019, taking cognizance of offences under Sections 166, 167, 182, 189, 190 and 500 of IPC against the petitioner.
- 2.** Heard the learned counsel for the parties and perused the relevant papers on record including the

impugned order vis-à-vis the contentions raised by the petitioner.

3. At the relevant time the complainant (opposite party no.2 herein) was working as Peon in ITDA, Karanjia, and the petitioner as the Project Administrator, ITDA, Karanjia. The complainant filed the complaint alleging inter-alia, that although he was posted in the said Office as Peon, the petitioner, in order to defame him, intentionally used to address him as Chowkidar-cum-Night Watchman, unauthorisedly cancelled the order of allotment of Government quarters in occupation of the complainant, issued order for vacation of quarters, threatened him with consequences if he did not vacate the quarters, rejected his appeal against the cancellation order, compelled him to do the job of Sweeper with threat of stoppage of salary, denied him the post of Junior Clerk / Junior Assistant despite the order of Odisha Administrative Tribunal, rejected

his application for leave, and harassed him in different ways.

4. As it further appears, while the learned SDJM, Karanjia had posted the matter to 30.08.2019 for recording initial statement of the complainant under Section 200 of Cr.P.C., on the said date, the complainant instead of examining himself, filed his statement in shape of affidavit, and thereafter while the proceeding was fixed to 04.09.2019 for enquiry under Section 202 of Cr.P.C., the complainant filed a petition declining to produce any witness / evidence for the purpose of the enquiry under Section 202 of Cr.P.C. However, vide the impugned order dated 16.09.2019 the learned S.D.J.M. took cognizance of the offence under Sections 166, 167, 182, 189, 190 and 500 of IPC directing for issuance of process against the accused-petitioner.

5. It is the contention of the learned counsel for the petitioner that there being non-compliance with

the provisions under Sections 200 and 202 of Cr.P.C., and no sanction under Section 197 of Cr.P.C. having been obtained for prosecution of the petitioner who is a public servant, the order of cognizance is not sustainable in law. It is further submitted by him that even otherwise also, the averments of the complaint do not make out any offence against the petitioner.

6. Admittedly, the complainant has not examined himself as required under Section 200 of Cr.P.C., and the learned SDJM being oblivious of the requirement of the law also acted upon the affidavit filed by the complainant. Needless to mention that when the law prescribes a procedure to be followed, the same can not be deviated. That apart, when the learned SDJM postponed the issue of process by fixing the case for the purpose of enquiry under Section 202 Cr.P.C., it is deemed that for the purpose of deciding whether or not there was sufficient ground for proceeding against the accused, he felt it necessary to conduct an enquiry under Section 202 Cr.P.C. But, no enquiry

was conducted by him, and basing upon the complaint and the affidavit filed by the complainant he passed the impugned order of cognizance. Further, a bare perusal of the complaint would reveal that the petitioner committed the alleged overt acts while purporting to act in the discharge of his official duty as the administrative authority of the complainant. In that event, the learned SDJM ought to have taken note of the provision under Section 197 of Cr.P.C. which requires previous sanction of the State Government as a pre-condition of taking cognizance of any offences against him. The impugned order is silent in this regard. For the infirmities as above, the impugned order is liable to be set-aside.

7. Hence, the CRLMC is allowed, and the impugned order stands quashed.

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

(S.Pujahari)
Judge

