

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2344 of 2022

Gandharba Sahu

....

Petitioner

Mr. Milan Kanungo, Sr. Advocate assisted by
Mr. Priya Ranjan Singh, Advocate

-Versus-

State of Odisha and Another

....

Opposite Parties

Mr. Sitikanta Mishra, ASC, OP No.1
Mr. Bismaya Roy, Advocate for OP No.2

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
18.11.2022

Order No.

04.

1. The challenge is as to the criminal proceeding in connection with G.R. Case No.87 of 2021 arising out of Banki P.S. Case No.142 of 2021 passed by the learned S.D.J.M., Banki on the grounds stated therein.
2. Learned court below took cognizance of the offence under Section 302 IPC and other allied offences vide order dated 27th September, 2021, a copy of which is at Annexure-1.
3. Petitioner and another accused stand chargesheeted for the alleged offence of murder under Annexure-3.
4. Learned Senior Advocate for the petitioner submits that with regard to four other accused persons, a full-fledged trial was held in S.T. No.9 of 2012 and the learned Sessions court by the judgment dated 11th April, 2022 acquitted all of them of the charges and such order of acquittal is based on hostile evidence including of O.P. No.2 informant and under the aforesaid circumstances, no

fruitful purpose would be served keeping the proceeding alive vis-à-vis the petitioner, which is pending before the learned S.D.J.M., Banki in G.R. Case No.87 of 2021 awaiting commitment. While contending so, Mr. Kanungo, learned Senior Advocate for the petitioner refers to the depositions of the prosecution witnesses, namely, O.P. No.2 and others besides judgment of the Sessions Court as at Annexure-4 and it is submitted that the entire evidence has been hostile which ultimately led to arrive at a conclusion that the prosecution failed to establish its case beyond reasonable doubt.

5. Mr. Mishra, learned counsel for the State on the other hand submits that the petitioner should face the trial notwithstanding the order of acquittal in S.T. No.9 of 2022.

6. Learned counsel for opposite party No.2 submits that opposite party No.2 does not have any objection, if the criminal proceeding vis-a-vis the petitioner is quashed against the backdrop of acquittal of the other accused persons in S.T. No.9 of 2022.

7. The Court perused the depositions of all the prosecution witnesses including P.W. 1, namely, informant, who is the son of the victim. Admittedly, the deceased had a homicidal death. However considering the evidence of P.W.1, it is made clear that they turned hostile as a result of which he was declared hostile by the prosecution, who was subjected to examination in terms of Section 154 of the Evidence Act. In course of such examination, the prosecution did not bring out anything incriminating except confronting suggestion which he denied outrightly and further, in his cross-examination, P.W.1 declined to have been examined by the police and claimed that he had put his signature on a blank paper instead. Majority of the witnesses examined from the side of the prosecution turned hostile and some of them have not even been cross-examined by the defence. Prosecution could not elicit anything adverse against any of the accused. Since the petitioner is on the same footing like the other four accused persons, who stood

acquitted after trial before the learned Sessions court, the Court is of the view that having received such evidence from the side of the prosecution in the trial, there is a remote possibility that any incriminating evidence would be produced in the event petitioner is subjected to a full blown trial.

8. Having regard to the above facts and submissions of the learned counsel for the petitioner and State and taking into consideration the fact that four other accused persons have been acquitted of all charges in ST No.9 of 2022, this Court arrives at a logical conclusion that the criminal proceeding which is pending before the learned S.D.J.M., Banki in G.R. Case No.87 of 2021 awaiting commitment should be quashed.

9. Accordingly, it is ordered.

10. Consequently, the criminal proceeding in G.R. Case No.87 of 2021 arising out of Banki P.S. Case No.142 of 2021 pending in the court of learned S.D.J.M., Banki is hereby quashed.

11. Issue urgent certified copy as per rules.

(R.K. Pattanaik)
Judge