

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3081 of 2018

Pramoda Kumar Biswal.

....

Petitioner

-versus-

State of Odisha.

....

Opposite Party

CORAM: JUSTICE S.PUJAHARI

ORDER

24.06.2022

Order No.

14. 1. This matter is taken up through Hybrid mode.
2. The petitioner in this application under Section 482 of the Code of Criminal Procedure (for short “Cr.P.C.”) has prayed for quashing of the order dated 21.06.2018 passed by the learned S.D.J.M., Koraput in G.R. Case No.1191 of 2017 taking cognizance of the offences under Sections 341, 323, 506, 385, 386/34 of IPC.
3. Heard the learned senior counsel appearing for the petitioner and the learned counsel for the State.
4. As it appears, the petitioner was the then M.V.I. of Koraput. A report was lodged against him indicating that while the Informant was travelling with his vehicle, he was detained

by the RTO staff and demanded Rs.1 lakh from him. When the Informant expressed his unwillingness to pay the amount as he has not committed any offence, his vehicle was forcibly taken and he was given a slap and also Rs.20,000/- was taken from him. They also removed the tyre of the vehicle. The same was being brought to the notice of the police, the same was investigated by the police and charge-sheet in the said case, i.e., Semiliguda P.S. Case No.130 of 2017 has been filed and pursuant to the same, cognizance has been taken and the petitioner, who was indicted, has been proceeded with.

5. Mr. S.K. Sarangi, the learned senior counsel appearing for the petitioner submits that the aforesaid allegation is false and concocted one, inasmuch as the petitioner being the M.V.I. had made the vehicle checking report and has lodged report indicating that the vehicle in question of the Informant with the number of a motorcycle was playing and, as such, the VCR was made against the Informant. For non-payment of the VCR amount, the vehicle was taken. As such, the case has been registered falsely. Furthermore, the petitioner while discharging his official duty alleged to have committed the offence, in absence of sanction under Section 197 of Cr.P.C., as such, he could not have been proceeded with.

6. Learned counsel for the State, however, would submit that immediately after the aforesaid incident FIR was lodged. No doubt, subsequently the vehicle of the Informant stated to

have detained for commission of the aforesaid offence, but seizure of the amount as well as tyre, coupled with the contemporaneous lodging of the report, so also other materials on record, it cannot be said that the allegation was false and concocted one and has been raised being aggrieved by the VCR report. Further, the act of the petitioner having no nexus to discharge of his official duty, as such, protection under Section 197 of Cr.P.C. was not available to him. Hence, the CRLMC filed deserves to be dismissed.

7. Reverting back to the case at hand, the prosecution is assailed against the petitioner on the ground that when he submitted VCR, the police case is initiated against him. However, from the materials available on record, especially the FIR was lodged immediately before the materials recovered during the course of investigation and the VCR was filed subsequently to the same, it is hard to believe that the petitioner had raised a false allegation prima-facie. Hence, prima-facie case is there disclosing the commission of offence.

8. Even if such offence is committed by a public servant, it has been contended that he can not be proceeded with without any sanction from the appropriate Government. Needless to say that Section 197 of Cr.P.C. has been embodied in the statute that a Government servant in exercise of power if committed any offence during the same, he cannot be prosecuted without the sanction of the Government. The same is there to protect

the Government servant to discharge their duties in a fearless manner. But, to avail of such sanction, the criminal act that is complained of, must have a nexus in discharge of the official duty. The aforesaid position of law has since been well settled in a line of decisions. Some of the decisions of the Apex Court in this regard are as under;

In the case of ***Bakhshish Singh Brar Vs. Gurmej Kaur and another***, reported in (1987) 4 SCC 663, the Apex Court have held as under :-

"6.....It is necessary to protect the public servants in the discharge of their duties. They must be made immune from being harassed in criminal proceedings and prosecution, that is the rationale behind Section. 196 and 197 of the Criminal Procedure Code. But it is equally important that rights of the citizens should be protected and no excesses should be permitted. "Encounter death" has become too common. In the facts and circumstances of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have to be balanced by finding out as to to what extent and now far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit."

In the case of ***Prakash Singh Badal Vs. State of Punjab***, reported in 2007(1) SCC 1 the Apex Court has also held as under:-

"20. The principle of immunity protects all acts which the public servant has to perform in the exercise of the functions of the Government. The purpose for which they are performed protects these acts from criminal prosecution. However, there is an exception. Where a criminal act is performed under the colour of authority but which in reality is for the public servant's

own pleasure or benefit then such acts shall not be protected under the doctrine of State immunity."

In the case of ***Subramanian Swamy Vs. Manmohan Singh and Another***, reported in (2012) 3 SCC 64 the Apex Court has held as under :-

"74.....Public servants are treated as a special class of persons enjoying the said protection so that they can perform their duties without fear and favour and without threats of malicious prosecution. However, the said protection against malicious prosecution which was extended in public interest cannot become a shield to protect corrupt officials. These provisions being exceptions to the equality provision of Article 14 are analogous to provisions of protective discrimination and these protections must be construed very narrowly. These procedural provisions relating to sanction must be construed in such a manner as to advance the causes of honesty and justice and good governance as opposed to escalation of corruption."

9. In the light of the aforesaid law laid down, when this Court scrutinize the facts that emerged from record against the petitioner, it finds that the acts committed appear to have no nexus in discharge of official duty, but allegedly committed to extract money in the guise of their official position by the present petitioner along with others. This Court, therefore, is of the view that the protection under Section 197 of Cr.P.C. is not available to him. Hence, the complaint / proceeding cannot be said to be incompetent one in the absence of sanction under Section 197 of Cr.P.C. to prosecute the petitioner.

10. Accordingly, this CRLMC filed by the petitioner challenging the impugned order of cognizance be devoid of merit stands dismissed.

(S. Pujahari)
Judge

MRS

