

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2503 of 2022

Bhabiswar Sahoo

....

Petitioner

Mr.Amitav Tripathy, Advocate

-Versus-

State of Odisha & Others

....

Opposite Parties

Mr. Priyabrata Tripathy, ASC

CORAM:

MR. JUSTICE R.K. PATTANAIK

ORDER

26.09.2022

Order No.

01.
 1. Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for opposite party No.2
 2. In the instant case, the challenge is as to the impugned order under Annexure-1 whereby the learned Additional Sessions Judge, Nayagarh by judgment dated 29th August, 2022 in Criminal Revision No. 17 of 2021 directed issuance of process against the petitioner for facing trial along with other accused persons against whom a charge sheet had been filed and the learned court of J.M.F.C., Khandapada and cognizance of the offences has been taken in respect thereof.
 3. The learned counsel for the petitioner submits that after lodging of the F.I.R., copy of which is at Annexure-1, Khandapada P.S. Case No. 265 of 2020 dated 23rd October, 2020 was registered and investigation was commenced which finally ended in submission of chargesheet against two of the accused persons excluding the petitioner and against the order of cognizance of the learned

J.M.F.C., Khandapada, opposite party No.2 approached the Sessions Court in Criminal Revision No. 17 of 2021 which was disposed of under Anneuxre-1. It is submitted that the learned court below did not issue process to the informant whereas opposite party No.2 approached the Revisional court and challenged the order of cognizance passed by the learned J.M.F.C., Khandapada and therein, a direction was made to issue process to the petitioner for facing his trial along with other accused persons and such a direction is not tenable in law which is objected to by the learned counsel for opposite party No.2 by claiming that the court in revision did not commit any error or wrong and for that, opposite party No.2 cannot be faulted with, inasmuch as, the learned J.M.F.C., Khandapada should have issued a process to him which he did not.

4. Admittedly, the learned J.M.F.C., Khandapada subsequent to the filing of the chargesheet took cognizance of the offences under Section 307 IPC and other allied offences by order dated 17th December, 2020 in G.R. Case No. 256 of 2020. The Court is of the view that if a chargesheet was submitted against two of the accused persons and the petitioner was left out, the learned J.M.F.C., Khandapada was required to issue a notice to the informant, namely, opposite party No.2 and he could have also taken cognizance of the said offences vis-a-vis the petitioner basing on the materials collected during investigation and submitted along with the chargesheet but he did neither and also did not issue any such process as required under law. The opposite party No.2 since was not summoned by the learned J.M.F.C., Khandapada was right in approaching the Revisional court but in so far as the impugned order under Annexure-1 is concerned, the court below should not have ordered issuance of notice to the petitioner straightaway

directing him to face trial along with other accused persons which is not the established procedure. In the considered view of the Court, the Sessions court should have directed the learned J.M.F.C., Khandapada to issue process to the informant, namely, opposite party No.2 in order to enable him to file a protest petition. In view of the above, the Court is of the opinion that though the revision was filed at the behest of opposite party No.2 the learned Additional Sessions Judge, Nayagarh could not have directed the petitioner to be added as an accused to face trial along with other accused persons without a notice for a protest petition and therefore, the impugned order under Annexure-1 cannot be sustained in law.

5. Accordingly, it is ordered.

6. In the result, CRLMC stands allowed. Consequently, the impugned order under Annexure-1 passed in Criminal Revision No. 17 of 2021 passed by the learned Additional Sessions Judge, Nayagarh is hereby set aside. As a corollary, the Court directs that the learned JMFC, Khandapada instead to issue a process to opposite party No.2 in order to enable him filing a protest petition and in case it is filed, then to treat the same as a complaint and thereafter to proceed and dispose it of as per and in accordance with law.

7. An urgent certified copy of this order be issued as per rules.

(R.K. Pattanaik)
Judge