

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2986 of 2019

Subasini Nayak

Petitioner
Mr. S. Rath, Advocate

-Versus-

State of Odisha

.... Opposite Party
Mr. T.K. Praharaj, SC

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
30.11.2022

Order
No.
04.

1. Heard learned counsel for the petitioner and learned counsel for the opposite party State.
2. Instant petition under Section 482 Cr.P.C. is filed at the behest of the petitioner for quashing of the order of cognizance under Annexure-1 and issuance of process to him by the learned court below on the ground that there is no material on record to prima facie prove and establish the offences alleged against her.
3. Learned counsel for the petitioner submits that the petitioner is the wife of Ex-Panchayat Samiti Member and a Health Worker and in so far as the allegation is concerned, she alleged to have misappropriated public fund along with other accused persons. It is further submitted that the petitioner did not play any role in utilizing the fund which was received for a project work but then she has been chargesheeted for the alleged offences under Sections 409, 120-B, 411 read with Section 34 IPC, whereupon, the learned court below took cognizance of the said offences vide Annexure-1 which is unjustified and thus, liable to be interfered with.

4. Mr. Praharaj, learned counsel for the State on the other hand submits that the petitioner may claim for discharge before the learned court below if there is no prima facie case made out against her as has been claimed by learned counsel appearing on her behalf.

5. A copy of the FIR is at Annexure-1 and the same is perused by the Court. In fact, on a report being lodged, Gop P.S. Case No.173 of 2017 under Sections 409, 120-B, 411 read with Section 34 IPC was registered. After completion of investigation since chargesheet was submitted, the learned court below took cognizance of the offences and summoned the petitioner and others.

6. According to Mr. Rath, learned counsel for the petitioner, the involvement of the petitioner cannot be believed for the reason that she did not receive fund for the alleged project work which was rather by the other accused persons, who alleged to have misutilized the same and hence, no case is made out against her. However, in considered view of the Court, the involvement of the other petitioner or otherwise needs examination and scrutiny of evidence collected during the investigation. As who received the fund for the project work and in what manner, the same was misutilized and misappropriated and by whom whether it was by the other accused persons independently or in connivance with the petitioner, who is the wife of the Ex-Panchayat Samiti Member has to be ascertained during and in course of enquiry and trial. In other words, it is not a fit case where this Court should exercise inherent jurisdiction to quash the impugned order under Annexure-1. However, the Court is of the view that the petitioner should be granted liberty to raise such ground and other points at the time of framing of charge for consideration of the learned court below.

7. Accordingly, it is ordered.

8. In the result, CRLMC stands disposed of with the liberty granted to the petitioner to raise all such grounds at the time of framing of charge in connection with G.R. Case No.352 of 2017 arising out of Gop P.S. Case No.173 of 2017 pending before the court of learned J.M.F.C., Konark, Puri and in the event any such application so moved by her, the learned court below shall consider the same and pass appropriate order on the plea of discharge.

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

(R.K. Pattanaik)
Judge



TUDU