

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1723 of 2021

Pratima Sahu

• • • •

Petitioner

versus-

State of Odisha and another

• • • •

Opposite Parties

CORAM: JUSTICE S. PUJAHARI

Order
No.

ORDER
05.07.2022

07.

1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the complaint petition filed by the Opposite Party No.2, which has been registered as I.C.C. No.48 of 2021, pending in the Court of S.D.J.M., Udala.
3. Heard Mr. Pitambar Acharya, learned Senior Advocate appearing for the Petitioner, Mr. S. Mohapatra, learned counsel appearing for the State-Opposite Party No.1, and Mr. Soumya Ranjan Das, learned counsel appearing for the Opposite Party No.2-Complainant.
4. The Petitioner in this case has sought for quashment of the F.I.R., which has been registered pursuant to a direction of the learned S.D.J.M., Udala in I.C.C. No.48 of 2021 in exercise of power under Section 156(3) of Cr.P.C.

5. The prosecution allegation, as revealed from the complaint petition, is that Petitioner while working as Assistant Public Prosecutor (APP) in the court of Sub-Divisional Magistrate-cum-Sub-Collector, Kaptipada submitted certain bills, which prima facie discloses that he had not participated in such proceeding. The Presiding Officer who is the Sub-Divisional Magistrate-cum-Sub-Collector, Kaptipada also stated to have issued a certificate indicating his participation even though the same was without any material on record pursuant to which such bill has been drawn. As the same discloses prima facie cognizable offence, the court sent the same for registration of a case and basing on the same, the F.I.R was registered vide aforesaid P.S Case for the offence under Sections 406/409/420/468/467/120-B/34 IPC against the Petitioner and the Sub-Collector.

6. Learned Senior Advocate Mr. Pitambar Acharya appearing for the Petitioner submits that the aforesaid allegation is false and concocted and the prosecution has been initiated maliciously with an ulterior motive to wreck vengeance on the Petitioner with a view to spite them due to private and personal grudge. Furthermore, it is submitted that pursuant to the direction passed in WP(C) No.19811 of 2021 at the instance of the Complainant with a prayer to direct the Director of Prosecution to conduct an enquiry into the alleged financial irregularities committed, this Court directed the Collector, Mayurbhanj to dispose of the representation.

Pursuant to the direction, the Collector, Mayurbhanj enquired into the matter and arrived at a conclusion that the allegation is not at all true. In the aforesaid factual backdrop, the F.I.R registered pursuant to the direction in the complaint case needs to be quashed as ultimately the conviction is remote and bleak. In support of such contention, he has placed reliance on the judgment of the apex Court in the case of ***State of Haryana and others vrs. Ch. Bhajan Lal and others***, reported in **1992 Supp (1) SCC 335**.

7. Controverting such submission of Mr. Pitambar Acharya, learned Senior Advocate appearing for the Petitioner, it is submitted by the learned counsel for the Opposite Party No.2-Complainant that the submission advanced is without any substance. According to him, the court when found to be a cognizable offence stated to have been committed from the complaint petition in exercise of the power under Section 156 (3) Cr.P.C. directed the Police to register the same as F.I.R and conduct the investigation. Pursuant to the same, F.I.R having been registered and the Police being investigating into the truth and veracity of the same, it cannot be said that as because the Collector has furnished certain report, F.I.R allegation is false one. The truth and veracity of such allegation can only be ascertained on due investigation by the Police in exercise of its statutory power. Therefore, at this stage it is not permissible to quash the F.I.R on the ground stated especially taking note of

the report of the Collector. Hence, it is submitted that the petition filed being devoid of merit and liable to be dismissed.

8. Learned counsel for the State has echoed the submission of the learned counsel for the Opposite Party No.2 and submits that the quashment of the F.I.R on the ground that it has been lodged to wreck the vengeance when the same discloses the commission of cognizable offence is impermissible. Furthermore, the report of the Collector on which much reliance being placed being subject to scrutiny by the investigating officer. Furthermore, the truthfulness of the allegation made in the F.I.R is subject to investigation and as such it is too premature to seek quashment of the same on the ground of the report furnished by the Collector indicating the allegation to be false.

9. In the case of **Sanatan Mahakud vrs. State & others** dealing with the quashment of the F.I.R passed in CRLMC No.148 of 2019 disposed of on 13.01.2021, this Court in paragraphs-9,10 and 18 have held as follows:

“9. Before addressing the contention of the parties, it would be apposite to mention here that the law with regard to quashment of the FIR and consequential investigation in exercise of the power under Section 482 Cr.P.C has since been well settled. Inherent power under Section 482 Cr.P.C for quashment of the FIR and the consequential investigation can be made when the FIR itself registered does not prima facie disclose commission or suspected commission of any cognizable offence but still the same has been registered and the investigation has been carried on. However, if the FIR discloses commission of a cognizable offence, normally, the Court will not interfere with the

investigation into the offence alleged and will allow the same to be completed for the purpose of collecting materials for proving the offence. Reliance in this regard can be placed on a decision of the Apex Court in the case of ***State of West Bengal vrs. Swapan Kumar Guha***, reported in (1982) 1 SCC 561, wherein the Apex Court have held as follows:-

“..... the legal position is well settled. The legal position appears to be that if an offence is disclosed, the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted Once an offence is disclosed, an investigation into the offence must necessarily follow in the interests of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing. The liberty and property of any individual are sacred and sacrosanct and the court zealously guards them and protects them. An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence.”

10. The Apex Court in the case of ***Bhajan Lal (supra)*** placing reliance in the case of ***Swapan Kumar Guha (supra)*** and many other decisions, have categorized the cases in which the FIR/prosecution can be quashed in exercise of the power under Section 482 Cr.P.C. Those cases are as follows :

“(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value

and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

XXX

XXX

XXX

18. So also, the Apex Court in the case of *State of Maharashtra & Ors vs Ishwar Piraji Kalpatri*, reported in 1996 SCC (Criminal) 150, have observed that if the ingredients which establish the commission of the offence or misconduct exist, then the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused. Allegations of *malafides* may be relevant while judging the correctness of the allegations or while examining the evidence. But the mere fact that the complainant is guilty of *malafides*, would be no ground for quashing the prosecution.

10. Taking note of the aforesaid law laid down, when the FIR allegation is addressed, it appears to this Court that as the same discloses a cognizable offence to have been committed, the Police as such is duty bound to register the same and conduct the investigation to find out the truthfulness of such allegation. But, as in the meanwhile the Collector, Mayurbhanj has furnished certain report, basing on the said report, it cannot be said that the FIR allegation is false at this stage in exercise of the power under Section 482 Cr.p.C. more so when such material placed cannot be said to have a sterling value negating the allegation in the FIR. The same is more so as Police has to be satisfied on the basis of such report and its impact on the FIR allegation during investigation and also while forming its opinion under Section 173 Cr.P.C.

11. Hence, Criminal Misc. Case filed to quash the FIR on the grounds taken and the submission advanced is devoid of merit.

12. However, it is hope and trust that the Police while investigating into the matter in exercise of the statutory power would look into the aforesaid report of the Collector and also any other materials collected and take an independent opinion without being influenced by the order of this Court in any manner and furnish its report under Section 173 Cr.P.C. on the basis of the opinion formed by him basing on the materials collected on the truthfulness of the FIR allegation.

13. With the aforesaid order, this CRLMC stands disposed of.

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

(S. Pujahari)
Judge

DA/PKS

