

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2894 of 2022

Sk. Amin and others

....

Petitioners

Mr. Pravash Chandra Jena, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. Tapas Kumar Praharaj, SC for State

**CORAM:
MR. JUSTICE R.K. PATTANAİK**

**ORDER
01.11.2022**

Order No.

- 01.
1. Heard Mr. P.C. Jena, learned counsel for the petitioners and Mr. T.K. Praharaj, learned Standing Counsel for the State.
 2. Prayer in the present case is to quash the entire criminal proceeding in C.T. No.547 of 2021 arising out of Bhograi P.S. Case No.169 of 2021 pending in the file of learned NGN-Cum-J.M.F.C., Bhograi on the grounds stated therein.
 3. The Court perused the copy of the Annexure-1.
 4. Learned counsel for the petitioners submits that no case is made out against the petitioners under Sections 341, 323, 294, 307, 506 and 34 of IPC and subsequently, it was converted to one under Section 302 IPC but it was committed under sudden provocation, however, all of them have been chargesheeted for the said offence and while claiming so, he refers to the FIR and prays that Section 302 IPC should be deleted.

5. Mr. Praharaj, learned Standing Counsel for the State on the other hand submits that petitioner No.1 was responsible for the injury caused by means of a crowbar and in response to the above, it is submitted that on account of sudden provocation, the incident has happened, thus, Section 302 IPC cannot be attracted.

6. Having regard to the facts and circumstances of the case, this Court is of the view that on such ground, the criminal proceeding cannot be quashed. In fact, the claim of sudden provocation is to be examined during enquiry and trial. The Court is of the view that the petitioners should be allowed to raise such a ground at the time of framing of charge, which would rather serve the purpose. Accordingly, it is ordered.

7. In the result, the CRLMC stands disposed of with liberty to the petitioner to claim for discharge from the offence under Section 302 IPC at the time of framing of charge before the learned Sessions Court after commitment and if any such application is so moved, the same shall be considered by the court in seisin over the matter and pass appropriate orders thereon in accordance with law.

8. Issue urgent certified copy of this order as per rules.

(R.K. Pattanaik)
Judge