

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2258 of 2021

Jitendra Majhi and Others

....

Petitioners

Mr. R. Das Mohapatra, Advocate

-Versus-

State of Odisha and Another

....

Opposite Parties

Mr. T.K. Praharaj, SC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

28.09.2022

Order
No.

02.

1. Heard learned counsel for the petitioners and learned Standing Counsel for the State.

2. Instant petition under Section 482 Cr.P.C. is filed by the petitioners for setting aside the order of framing of charge under Annexure-5 passed by the Additional District and Sessions Judge, Balliguda in connection with S.T. No.53 of 2019 on the grounds *inter alia* that there is no prima facie case made out against any of them, therefore, it is not tenable in law and thus, liable to be set aside.

3. A copy of the FIR as at Annexure-1 so also impugned order as at Annexure-5, whereby, the learned court below rejected an application under Section 227 Cr.P.C. moved by the petitioners seeking discharge are perused.

4. Learned counsel for the petitioners submits that the petitioners were simply found to be following the deceased along the principal accused and others and did not at all commit any overt act but they have been falsely entangled in the case at the instance

of the informant, namely, opposite party No.2, who is the wife of the deceased. It is further submitted that the weapon of offence was recovered and seized at the behest of the principal accused, who is the only assailant and said to have assaulted the victim by means of an axe and considering the materials on record and since there is no involvement prima facie proved and established, the learned court below fell into a serious error in rejecting the application for discharge under the impugned order vide Annexure-5 which is objected to by Mr. Praharaj, learned counsel for the State on the ground that the names of the petitioners find a mention in the FIR i.e. Annexure-1 and ultimately at end of investigation, all of them have been chargesheeted under Section 302 IPC and other allied offences for having shared a common intention to assault and eliminate the deceased and hence, there is no legal infirmity in such order.

5. The Court perused the FIR and its contents where in fact the names of the petitioners stand mentioned for being involved in the alleged occurrence. The informant, namely, opposite party No.2 specifically alleged that the principal accused assaulted her husband by means of an axe in present of others. The allegation is to be effect that the petitioners and others beside the principal accused followed the victim and at the end the assaulted was dealt with.

6. It is claimed by the learned counsel for the petitioners that the petitioners were found following the deceased and there is no direct involvement as such which is revealed from the FIR itself. However, it is made to appear that opposite party No.2 specifically alleged that the petitioners were present and the principal accused during and in course of the alleged incident carried out the assault. Finally, after the investigation was concluded, the chargesheet was submitted against the petitioners and others and for having

committed the murder of the deceased. Notwithstanding the fact that the weapon of offence was recovered at the instance of the principal accused, who was the only assailant, the Court is of the view that considering the entirety of the materials on record a prima facie case is made out against the petitioners. The nature of participation whether they were directly involved or simply present at the spot as has been claimed by the learned counsel appearing for them can only be examined by the court below. It is claimed that the charge has been framed in the meantime. If charge is already framed against the petitioners, the participation or otherwise by them vis-à-vis the alleged incident shall be a subject of trial. In other words, so to say, the Court does not find any error having been committed by the learned court below while rejecting an application under Section 227 Cr.P.C. moved by the petitioners before the learned court below. It is stated that the petitioners shall have liberty to confront and lead such evidence during trial in order to prove their innocence but for the present, as to the framing of charges, the Court does not find any legal infirmity in the impugned order.

7. Accordingly, it is ordered.
8. In the result, the CRLMC stands dismissed.
9. An urgent certified copy of this order be granted as per rules.

(R.K. Pattanaik)
Judge