

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2313 of 2021

Ashok Mishra @ Ashok Kumar ***Petitioner***
Mishra.

-versus-

Ellora Pattnaik. ***Opposite Party***

CORAM: JUSTICE S.PUJAHARI

ORDER
28.07.2022

Order No.

03.

1. This matter is taken up through Hybrid mode.
2. The petitioner in this application under Section 482 of the Code of Criminal Procedure (for short “Cr.P.C.”) has prayed for quashing of the order dated 28.09.2021 passed by the learned Sessions Judge, Jeypore in Criminal Revision No.2 of 2018 confirming the order dated 06.01.2018 passed by the learned S.D.J.M., Jeypore in I.C.C. No.209 of 2017 confirming the impugned order of cognizance under Section 294 of I.P.C.
3. Heard the learned counsel for the petitioner. None appears for the opposite party-complainant in spite of sufficiency of notice on her.

4. As it appears, the petitioner had rented a restaurant in the premises of his Hotel Mount Valley to the opposite party-complainant. The petitioner allegedly with evil design to evict the opposite party-complainant from the said restaurant before the expiry of the period of lease stated to have engaged a person, i.e., the Manager of the Hotel in question and other staff to create disturbances in the said restaurant and also assaulted the husband of the complainant, but raising a false allegation booked the husband of the opposite party-complainant in a police case. Thereafter, when the opposite party-complainant and her husband asked the petitioner as to why he had been engaged in such illegal activities for evicting the opposite party-complainant from the restaurant before the expiry of the lease period, the petitioner stated to have abused and assaulted them. However, the police on the complaint of the opposite party-complainant having not taken any action, the aforesaid complaint case was filed. In the complaint case the evidence was adduced and cognizance of the offences under Sections 294 and 341 of IPC has been taken against the petitioner. The petitioner challenging such order of cognizance preferred a revision before the learned Sessions Judge, Koraput at Jeypore vide Criminal Revision Petition No.2 of 2018. In the said criminal revision, the Revisional Court while holding that there is no material to take cognizance of offence under Section 341 of IPC, held that prima-facie material is there to take cognizance of offence under Section 294 of IPC. The petitioner being aggrieved by the said order confirming the order of

cognizance under Section 294 of IPC, filed this petition to quash the same.

5. Learned counsel for the petitioner submits that the materials on record would clearly show that on a false and concocted allegations, a case has been initiated against the petitioner due to dispute with regard to possession of a restaurant which is purely civil in nature. The same is more so as some false and frivolous allegations are made under Section 341 of IPC which the revisional Court believed to be not there. But, believing that the offence under Section 294 of IPC is made out, has upheld the cognizance taken of the same by the trial Court and proceeding against the petitioner. The offence is trivial in nature. As such, when filing of the complaint being actuated with malice is not ruled out, this Court should set-aside the order of the revisional court as well as the trial Court and quash the criminal prosecution, inasmuch as allowing the said prosecution would be nothing but an abuse of the process of the Court.

6. After going through the both the orders of the trial court as well as the revisional Court and also on going through the materials available on record, this Court has every reason to believe that the aforesaid case has been raised being actuated with malice, inasmuch as there was disputed between the parties with regard to lease of a restaurant which is purely civil in nature and the present case is an offshoot of the same. The

same being raised falsely during an altercation with regard to eviction before expiry of the lease period is not ruled out. Hence, allowing the prosecution in this case that too for an offence under Section 294 of IPC would be an abuse of the process of the Court also.

7. I would, therefore, allow this Criminal Misc. Case application and quash the impugned order of the revisional Court with regard to confirming the order of cognizance under Section 294 of IPC. Consequently, the proceeding vide I.C.C. No.209 of 2017 against the petitioner stands quashed. The trial court shall do well to comply with this order on production of the certified copy of this order.

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

(S. Pujahari)
Judge

MRS