

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMC No. 3564 of 2022

Radheshyam Gupta

....

Petitioners

Mr. Brundaban Rout, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. S.S.Mohapatra, ASC

CORAM:
JUSTICE R.K.PATTANAİK

Order No.

ORDER
29.11.2022

01.

1. Heard learned counsel for the petitioner and Mr. Mohapatra learned counsel for the State-opposite party No.1.

2. Instant petition under Section 482 of Cr.P.C. is filed by the petitioner for quashing of the order of cognizance dated 6th June, 2022 and the entire criminal proceeding in 2(C).C.C.No. 29 of 2018 pending in the file of learned SDJM, Jeypore.

3. Copy of the order cognizance is at Annexure-2 and the same is perused by the Court. In fact, the learned court below has taken cognizance of offence under Section 27(b)(i)(2) and Section 28 of the Drugs and Cosmetic Act, 1940 against the petitioner by order dated 6th June, 2022.

4. Learned counsel for the petitioner submits that since there has been no notice at the time of seizure and procedural lapses have taken place during investigation, the criminal proceeding by way of a complaint in 2(C).C.C.No. 29 of 2018 cannot be allowed to continue.

5. Mr. Mohapatra, learned counsel for the State on the other hand submits that the learned court below was justified in taking

cognizance of the alleged offences later to the lodging of the provisional prosecution report.

6. A copy of the P.R. i.e. Annexure-1 describes the circumstances leading to the lodging of the complaint against the petitioner.

7. The contention is that on account of the procedural lapses during investigation since some of the provisions of the special Act have not been followed, the criminal proceeding cannot be sustained in law which is therefore to be quashed in exercise of inherent jurisdiction. According to the Court, such a question as to whether due to procedural lapses in not complying the provisions of the special Act, the proceeding as a whole vitiated or not shall have to be examined during and in course of enquiry and trial and thus, cannot be a ground to quash the entire proceeding pending before the court of learned SDJM, Jeypore. In other words, it is not a fit case where any such jurisdiction under Section 482 Cr.P.C. should be exercised leaving open such question to be decided during trial, however, with a liberty to the petitioner to raise any such ground at the time of framing of charge which according to Court would be justified.

8. Accordingly it is ordered.

9. In the result, CRLMC stands disposed of with a liberty granted to the petitioner to raise any such ground as available to him in law at the time of framing of charge in connection with 2(c).C.C.No. 29 of 2018 pending in the file of learned SDJM, Jeypore and in the event any such application is so moved, the learned SDJM, Jeypore shall do well to pass appropriate order as per and in accordance with law.

(R.K.Pattanaik)
Judge