

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1838 of 2020

Gouri Sankar Pati

....

Petitioner

Ms. D. Mahapatra, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. T.K. Praharaj, SC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

31.10.2022

Order
No.
09.

1 Heard learned counsel for the petitioner and learned counsel for the State opposite party.

2. Instant petition is filed by the petitioner assailing registration of the case pursuant to the lodging of FIR vis-à-vis Munigada P.S. Case No.99 of 2019 corresponding to G.R. Case No.249 of 2019 pending in the file of learned J.M.F.C., Bissam Cuttack on the grounds stated therein.

3. A copy of the FIR which is at Annexure-1 is perused by the Court. In fact, later to the lodging of the FIR, Munigada P.S. Case No.99 was registered under Sections 273, 420 read with 34 IPC and Section 20 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (in short 'COTPA').

4. Ms. Mahapatra, learned counsel for the petitioner submits that no offence under Section 273 IPC is made out on the consideration of chemical examination report as percentage of nicotine in respect of the exhibits so detected has not been indicted

therein. It is further submitted that for selling of manufacturing Tobacco products an offence under Section 420 IPC cannot be attracted. That apart, according to Ms. Mahapatra, learned counsel for the petitioner, an offence under Section 20 of the COTP Act is also not made out for the fact that the petitioner is not involving in manufacture of Tobacco products. It is submitted that considering the nature of allegations as made out in the FIR and materials on record, since no case is made out under Sections 273 and 420 IPC besides Section 20 of the COTP Act, the criminal proceeding which has been initiated and currently pending before the court of learned J.M.F.C., Bissam Cuttack in G.R. Case No.249 of 2019 should be quashed in the interest of justice.

5. Mr. Praharaj, learned counsel for the State refers to the chemical examination report and submits that in respect of some of the exhibits, namely, A. C & E, nicotine is detected. In fact, a copy of the chemical examination report which has been sent to the learned court below is produced for Court's perused. In response to the above, Ms. Mahapatra, learned counsel for the petitioner submits that percentage of nicotine is not mentioned in the chemical examination report which is relevant for the purpose of an offence under Section 273 IPC so as to prove and establish that the seized Tobacco products to be injurious to health.

6. At present, investigation is still underway. Considering the materials on record and submission of learned counsel for the respective parties, the Court is of the view that it would be too premature to arrive at any such conclusion as to the tobacco items so recovered and seized from the petitioner to be spurious or otherwise. That apart, barely referring to the chemical examination report, it would not be justified to hold that offence under Section

273 IPC is not made out so also the other offences including Section 20 of the COTP Act. In other words, the petitioner should await the outcome of the investigation which is currently in progress. The Court is of the view that it would not be appropriate at this point of time to reach at a decision one way or the other considering the chemical examination report and the allegation which is made out in the FIR. So therefore the conclusion is that the Court is not inclined to quash the criminal proceeding which has been initiated vis-à-vis G.R. Case No.249 of 2019 pending before the learned J.M.F.C., Bissam Cuttack for the reasons indicted herein above.

7. Accordingly, it is ordered,

8. Consequently, CRLMC stands disposed of. However the petitioner is granted the liberty to raise all such grounds at the time of framing of charge, if in the event, the investigation results in submission of chargesheet against him under the alleged offences. It is further directed that the petitioner who is under interim protection by the Court's order dated 27th September, 2022 shall surrender before the learned court J.M.F.C., Bissam Cuttack on or before 18th November, 2022 in connection with Munigada P.S. Case No.99 of 2019 corresponding to G.R. Case No.249 of 2019 and in the event he surrenders within the stipulated time, the court shall release him on bail subject to such terms and conditions as deem just and proper in the facts and circumstances of the case.

9. An urgent certified copy of this order be granted as per rules.

(R.K. Pattanaik)
Judge