

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2813 of 2021

Kailash Behera

.... **Petitioner**
Mr. B.K.Biswal, Advocate

-Versus-

State of Odisha & Another

.... **Opposite Parties**
Mr. S.S.Mohapatra, ASC

CORAM:
JUSTICE R.K.PATTANAİK

Order No.

ORDER
09.12.2022

04.

1. Defects be ignored.
2. Heard learned counsel for the petitioner and Mr. Mohapatra, learned counsel for the State-opposite party No.1. None appears for opposite party No.2 despite valid service.
3. Prayer in the present case is for quashing of the order of cognizance under Annexure-3 in I.C.C. Case No.28 of 2021 pending in the court of learned JMFC, Narasinghpur on the grounds stated therein.
4. A copy of the F.I.R. is at Annexure-1. The Court perused the final form as at Annexure-2.
5. Learned counsel for the petitioner submits that even by considering the complaint in I.C.C. Case No. 28 of 2021, no offence is made out against the petitioner, who alleged to have illicit relationship with the wife of opposite party No.2. While claiming so, learned counsel for the petitioner refers to the initial statement of opposite party No.2 recorded under Section 202 Cr.P.C. and

evidence received during and in course of enquiry in terms of Section 202 Cr.P.C. and submitted that if at all any offence is made out, the same is in respect of Section 506 IPC as no other material was placed at the disposal of the learned court below to prove the remaining offences. It is contended that out of suspicion, opposite party No.2 filed the complaint and that apart, the F.I.R. which was lodged, a case was registered and investigated upon finally resulted in submission of final report (Annexure-2).

6. Mr. Mohapatra, learned counsel for the State on the other hand submitted that the learned JMFC, Narasinghpur considered the initial statement of the complainant, namely, opposite party No.2 and received such other evidence during enquiry and on being satisfied, passed the impugned order of cognizance dated 22nd September, 2021 under Annexure-3 and therefore, it should not be interfered with.

7. The Court perused the initial statement of opposite party No.2 recorded under Section 200 Cr.P.C. and also the complaint in I.C. C. Case No. 28 of 2021. Admittedly, after the F.I.R. was lodged, Narasinghpur P.S. Case No. 198 of 2020 was registered under the alleged offences which led to the submission of the final report as a mistake of the fact. It is not known as to whether any material documents have been seized in connection with the case by the police considering the allegation that the wife of opposite party No.2 has had abortion after having illicit relationship with the petitioner. In fact, the learned court below received the protest petition later to the submission of the final report and treated the same as a complaint and proceeded further and took cognizance of the alleged offences. After recording the statement of opposite party No.2 under Section 200 Cr.P.C. and receiving evidence during enquiry under Section 202 Cr.P.C. on examination of sister in-law of

opposite party No.2, the court below considered it appropriate to take cognizance of the alleged offences which in the considered view of the Court is brazenly deficient. The learned court below should have labored more, enquired into and ought to have an elaborate enquiry in terms of Section 202 Cr.P.C. as against the background that for the self-same allegation when an F.I.R. was lodged by opposite party No.2 which ultimately led to submission of final report. In other words, the Court is of the conclusion that before taking cognizance of the alleged offences, the learned court below should have had a detailed enquiry under Section 202 Cr.P.C. and ought to have insisted upon opposite party No.2 to submit such other incriminating material to show the involvement of the petitioner vis-a-vis offences under Sections 497 and 312 IPC as It was alleged that his wife had abortion on account of the illicit relationship.

8. Accordingly, it is ordered.

9. Consequently, CRLMC stands disposed of with a direction to the learned JMFC, Narasinghpur to conduct a detailed enquiry under Section 202 Cr.P.C. in connection with I.C.C. Case No. 28 of 2021 and thereafter, to proceed and pass appropriate order as per and in accordance with law. As a necessary corollary, the impugned order of cognizance dated 22nd September, 2021 as at Annexure-3 is hereby set aside.

(R.K.Pattanaik)
Judge