

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC NO.1693 of 2021

(In the matter of application under Section 482 of the Criminal Procedure Code, 1973).

Babujan @ Sk. Sabjan ... **Petitioner**
-versus-

State of Orissa ... **Opposite Party**

For Petitioner : **Mr. K.A. Guru, Advocate**

For Opposite Party : **Mr. S.R. Roul, ASC**

CORAM:

JUSTICE G. SATAPATHY

DATE OF JUDGMENT :23.08.2023

G. Satapathy, J.

1. The petitioner has invoked the jurisdiction of this Court U/S. 482 of Cr.P.C. by praying for the following relief:-

"To quash the order of cognizance dated 21.06.2021 passed by the learned S.D.J.M., Khurda in G.R. Case No. 486 of 2019 arising out of Khurda P.S. STF Case No. 7 of 2019 U/Ss. 379/ 411/ 420/ 467/468/471/120(B)/34 of IPC r/w Section 25/27 of Arms Act and Section

3/4/5 of Explosive Act with Rule 51 of OMMC Rule, 2016”.

2. An overview of facts involved in this case are on 01.06.2009, the DSP, STF Bhubaneswar namely Praveen Chandra Tripathy, lodged an FIR against nineteen accused persons before the SP STF, CID, Crime Branch, Bhubaneswar, who registered STF P.S. Case No. 07 of 2019 and directed another DSP to investigate the case and accordingly, on 27.09.2019 the DSP Ram Chandra Thamb (I.O.) after investigation submitted charge sheet against nine accused persons for commission of offence punishable U/Ss. 379/ 411/ 420/ 467/ 468/ 471/120(B)/34 of IPC r/w Section 25/27 of Arms Act and Section 3/4/5 of Explosive Substance Act with Section 51 of OMMC Rule, 2016 by keeping the investigation open U/S. 173(8) of Cr.P.C. for collection of further

evidence and to examine the complicity and the apprehension of other accused persons involved in this case.

3. On 20.02.2020, the I.O., however, placed the second charge sheet against twenty accused persons including the earlier nine accused persons by keeping investigation open U/S. 173(8) of Cr.P.C., on the self same grounds. Further, on 27.05.2021, the I.O. placed third and final charge sheet against forty five accused persons including the earlier accused persons and the present petitioner as an accused persons for the self same offences. The petitioner claims that since no judicial order was passed for keeping the investigation open, the charge sheet against him is bad and cannot sustain in the eye of law and he, thereby, prays to invoke the jurisdiction of this Court U/S. 482 of Cr.P.C. to quash the order taking cognizance of offences.

4. It is, therefore, very clear that the petitioner challenges the impugned order taking cognizance of offences on a very short ground for not obtaining permission to keep the investigation open and he claims the order taking cognizance of offence in this case is otherwise bad and liable to be quashed. In support of such contention, the learned counsel for the petitioner has relied upon the decision in (1) **Ram Lal Narang, vs. State (Delhi Admn.) and Om Prakash Narang and another vs. State (Delhi Admn.); AIR 1979 (SC) 1791**, (2) **Sri Bhagaban Samardha Sreepada Vallabha Bhenkata Vishwandadha Maharaj Vs. State of Andhra Pradesh and others; (1999) CRI.L.J. 3661 (SC)**, (3) **Prithwis Kumar Nag Vs. State of West Bengal and others; (1998) CRI.L.J. 3502(Cal.)** and (4) **Reeta**

***Nag Vs. State of West Bengal and others;
(2010) CRI.L.J. 2245 (SC).***

5. Adverting to the challenge of the petitioner, this Court considers it apt to refer to Section 173(8) of the Cr.P.C. which reads as under:

“Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)”.

6. The statute as narrated above clearly describes unambiguously the power of Investigating Officer for further investigation.

In the decision relied upon by the petitioner in **Ram Lal (supra)** the Apex Court in Paragraph 22 had held as under:-

*"In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, **the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light.** Where the police desired to make a further investigation, the police could express their regard and respect for the Court by seeking its **formal permission** to make further investigation."*

7. In the aforesaid decision the Apex Court had, however, laid down that :-

*"in the interests of independence of the magistracy and the judiciary, in the interests of purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, **it would ordinarily be desirable that the police should inform the Court and seek formal***

permission to make further investigation when fresh facts come to light.”

8. Similarly, in ***Bhagaban Samardha (supra)***, it is held by the Apex Court that it would be desirable that the Police should inform the Court and seek formal permission to make further investigation.

9. A cumulative reading of the provision U/S. 173(8) of the Cr.P.C. and the decisions cited by the learned counsel for the petitioner, would go to reveal that it would be desirable for the Police to inform the Court and seek formal permission to make further investigation, but the same being not mandatory, there cannot be any fetter to the power of Police to further investigate U/S. 173(8) of the Cr.P.C. The order taking cognizance of offences cannot be questioned merely because the Police has not obtained

the formal permission to investigate, either by mistake or otherwise and on that score, the order taking cognizance of offence cannot be quashed, when the materials collected by the Investigating Agencies disclose the very ingredients of the offences, under which the cognizance is taken.

10. In what circumstance a criminal proceeding or an order can be quashed, has been examined more than once by a catena of decisions and the scope and ambit of exercise of power U/S. 482 of the Cr.P.C., has been considered by the Apex Court in the most celebrated decision in ***State of Haryana and Others Vrs. Ch. Bhajan Lal and Others; (1992) Supp (1) SCC 335***, which by itself is a locus classicus, wherein at paragraph-102, the Apex Court has held as under:

In the backdrop of interpretation of the various relevant provision of the Court

under chapter XIV and of the principle of law enunciated by this Court in a series of decisions relating to the exercise of the extra ordinary power under article 226 or the inherent powers U/S. 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised;

“(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations made in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under section 156(1) of the Code except under an order of a Magistrate within the purview of section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate, as contemplated under section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuation of the proceedings and/are where there is a specific provision in the Code or the concerned Act providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and

with a view to spite him due to private and personal grudge.”

11. On a careful analysis of the materials placed on record and applying the provisions of law on the circumstance in which a criminal case can be quashed as enumerated above in ***Bhanjan Lal (supra)***, the impugned order taking cognizance of offence in this case having not covered within the aforesaid parameters cannot be quashed by this Court in exercise of power U/S 482 of the Cr.P.C.

12. In the result, the CRLMC stands dismissed on contest, but in the circumstance, there is no order as to costs.

(G. Satapathy)
Judge

*Orissa High Court, Cuttack,
Dated the 23rd of August, 2023/S.Sasmal*