

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC NO.701 OF 2023

(From the order dated 2nd December, 2020 passed by learned Sub-Divisional Judicial Magistrate, Gunupur in G.R. Case No.313 of 2020)

Midiyan Pani and others

... **Petitioners**

-versus-

State of Orissa

... **Opposite Party**

Advocates appeared in the case through hybrid mode:

For Petitioners: Mr.P.K.Mishra,
Advocate

सत्यमेव जयते -versus-

For Respondent: Mr.M.R.Mishra,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

29.03.2023.

Sashikanta Mishra,J. The Petitioners, numbering 146 persons have filed this application under Section 482 of Cr.P.C. with

prayer to quash the order dated 2nd December, 2020 passed by learned S.D.J.M., Gunupur in G.R. Case No.313/2020, arising out of Puttasingh P.S. Case No.59/2020 whereby, cognizance was taken of the offences under Sections 269/270/34 of I.P.C. and process was issued to the Petitioners-accused persons.

2. The brief facts of the case are that on 13th July, 2020 one Edison Lima, who was Pastor of Baptist Church, Puttasingh in the district of Rayagada expired. A monthly prayer was arranged in Puttasingh Baptist Church by the villagers of Puttasingh on 13th August, 2020 to offer prayer for the departed soul. While the Petitioners had congregated in the Church, the local Police personnel entered into the Church premises and accosted the Petitioners as to why they had congregated in such large numbers violating the guidelines of the Government issued to tackle Corona-19 pandemic, which was then prevailing. It is further claimed that the Petitioners were not wearing masks and had not maintained social distancing. Since

such congregation was contrary to the Government guidelines, the S.I. of Police of Puttasingh P.S. submitted a written reporting leading to registration of Puttasingh P.S. Case No.59 dated 13th August, 2020 under Sections 269/270/34 of I.P.C. In course of investigation, notice under Section 41-A of Cr.P.C. was issued to the Petitioners. Charge sheet was submitted in the case upon completion of investigation under the aforementioned sections. The Court below, by the impugned order taking into consideration the allegations and the statement of witnesses recorded under Section 161 of Cr.P.C., took cognizance of the offences.

3. Mr. P.K.Mishra, learned counsel appearing for the Petitioners, submits that there is no material, prima facie, to show that the guidelines of the Government had been violated. Even otherwise, there is no evidence to show that because of such congregation there was spread of Corona virus. Therefore, initiation of the

criminal proceeding against large number of innocent villagers amounts to an abuse of process of the Court.

4. Be it noted that by order dated 1st March, 2023 this Court specifically wanted to know as to if there is any evidence of any person belonging to the village having been affected with Corona virus because of the congregation referred to in the F.I.R. Despite sufficient opportunity, the prosecution could not provide such information.

5. Mr. M.R.Mishra, learned State counsel submits that the statements of the witnesses recorded under Section 161 of Cr.P.C. would clearly show that the Petitioners had congregated inside the Church in large numbers at a time when corona pandemic was at its peak. This was against the Government guidelines to maintain social distancing as also other protocols like wearing masks etc.

6. On going through the F.I.R. allegations and the statement of the witnesses recorded under Section 161

of Cr.P.C. which are available on record, this Court finds that there was undoubtedly a congregation of several persons numbering more than 100 inside the Church at the relevant time. It is also true that certain guidelines had been issued at the relevant time by the Government to control the spread of Corona virus. It has been alleged that the Petitioners were not wearing masks and had not maintained social distancing. It has not been indicated as to how big the Church was and what was the distance maintained between the Petitioners. That apart, there is absolutely no evidence to show that because of such congregation any person was affected by Corona virus immediately or shortly thereafter. It is to be noted that the sole purpose of issuing the guidelines by the Government was to stop the spread of Corona virus. As already stated, there is no evidence even, prima facie, to show that any such infection had happened because of the congregation in question. Moreover, it is well settled that entanglement of a person in a criminal case is a serious matter and unless a definite criminal intention is forthcoming from

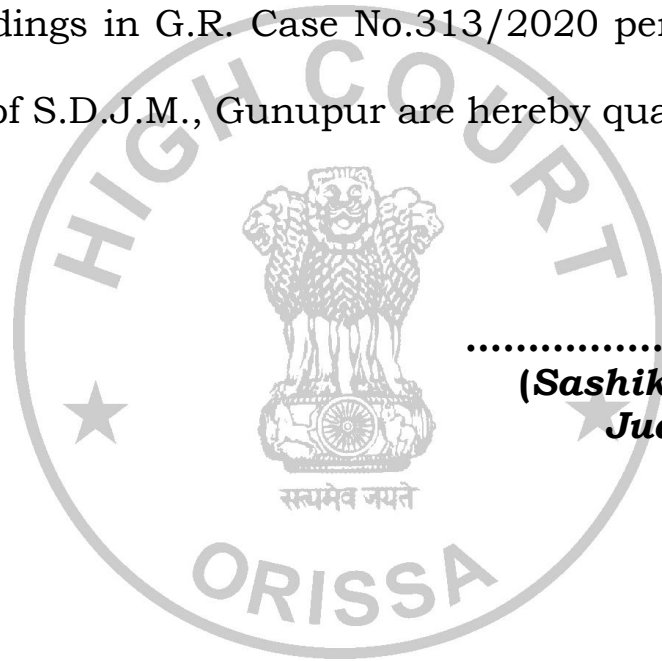
the records, it would not be proper to implicate a person in a criminal case. Reference in this regard may be had to the decision of the Apex Court in the case of ***Pepsi Foods Ltd. and another vs. Special Judicial Magistrate and others***; 1998 5 SCC 749. It is reiterated that a criminal case cannot be initiated as a matter of course. Similarly, the Magistrate is not to act as a mere Post Office to endorse the findings of the investigating agency mechanically. Unless, the Magistrate is satisfied that there is at least prima facie evidence of the alleged offences having been committed, it is not proper on his part to take cognizance of the same. The least the Magistrate could have done in the present case was to ask the investigating agency to show as to if any person was affected by Corona virus because of such congregation before taking cognizance.

7. Mr. P.K.Mishra, has relied upon a decision of the Madras High Court, rendered by a Hon'ble Single Judge of Madurai Bench in the case of ***A. Muniadhas***

vs. The State (CrI. O.P.(MD) No.17957/2021), wherein a criminal case was initiated against the members of a political party for protesting against non-construction of Government Hospital at the allotted site during a time when the pandemic was at its peak. The Hon'ble Single Judge held that though the informant cannot be blamed for registering the F.I.R. yet the question is whether the prosecution could be allowed to continue. The Single Judge further found that the Petitioner had raised a legitimate public issue and as a result no adverse consequence had ensued and further the accused had not indulged in any act of violence. This Court finds the reasoning of the Hon'ble Single Judge of the Madras High Court quite applicable to the facts of the present case as has been narrated hereinbefore. Thus, this Court finds lack of evidence of any criminal intention on the part of the Petitioners, rather, the congregation was for a pious reason to pray for a departed soul. Obviously, no criminality can be attributed in such a case.

8. Therefore, in the considered view of this Court, continuance of criminal proceedings against the Petitioners would certainly amount to an abuse of the process of the Court which therefore, warrants interference by this Court.

9. In the result, the CRLMC is allowed. The proceedings in G.R. Case No.313/2020 pending in the Court of S.D.J.M., Gunupur are hereby quashed.



.....
(Sashikanta Mishra)
Judge

Ashok Kumar Behera





