



IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMC No. 3159 of 2024

(An application under Section 482 of Cr.P.C.)

Shyam Sundar Agrawalla Petitioner

-Versus-

State of Odisha & Another
.... Opposite Parties

Advocate(s) appeared in this case:-

For Petitioner : Mr.Mr. P.K.Mishra,
Advocates.

For Opp. Party : Mr. Mr. S. Behera,
Additional Government Advocate
Mr. S.C.Mishra, Advocate for
Opposite Party No.2

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
4th March, 2025

SASHIKANTA MISHRA, J.

The petitioner is an accused in ICC Case No. 74 of 2012 corresponding to C.T. Case No. 1315 of 2005 of the Court of learned JMFC (LR) Angul. In the present application, filed under Section 482 of Cr. P.C., he seeks to challenge the order



dated 30.05.2024 passed by the said Court in rejecting his application for discharge from the case.

2. The facts, relevant only to decide the present application are as follows;

The present Opposite Party No.2 filed FIR before the OIC, Bantala Police Station on 20.07.2005 alleging therein that she had set up an industry by availing loan from the OSFC, Angul Branch. On 03.03.2001, the industry was illegally seized by OSFC and auctioned in favour of the petitioner on 28.02.2002. The Opposite Party No.2 challenged such action of the OSFC before this Court by filing a writ application (OJC No. 3777 of 2002). This Court granted stay of the order of transfer. While the matter stood thus, the petitioner, despite being aware of the order of stay, wrongfully trespassed into the factory premises on 22.10.2004, dismantled the unit by forcibly breaking the front gate and doors and removed the iron truss, AC & GI Sheets of the main gate and also the installed machineries approximately amounting to Rs. 12 lakhs. On such FIR,



Bantala P.S. Case No. 45 of 2005 was registered under Sections 447/448/427/379/294/506 of IPC and investigation was taken up. Upon completion of investigation, final report was submitted on 27.12.2006. After lapse of 6 years, the Opposite Party No.2 filed protest petition in Court of learned SDJM, Angul which came to be registered as ICC case No. 74 of 2012 under the aforementioned offences. After conducting inquiry as contemplated under Section 202 of Cr.P.C., the Court below took cognizance of the offences under Sections 447/448/427/380/506 of IPC. Upon appearance after receipt of summons, the petitioner filed an application for discharge on the ground that no prima facie case is made out which was however rejected by learned JMFC by order dated 07.06.2018. The petitioner approached the Court of learned Sessions Judge, Angul in Criminal Revision No. 10 of 2018 but the same was also dismissed on 27.02.2020. The petitioner thereafter approached this Court in CRLMC No. 166 of 2021 which was disposed of on 19.05.2023 permitting the petitioner to raise all the pleas



urged in the said petition before the trial Court at the appropriate stage.

3. Being thus permitted, the petitioner filed discharge petition again before the trial Court raising all the grounds taken by him in CRLMC No. 166 of 2021. By order dated 19.05.2023, learned JMFC (LR) Angul rejected the petition.

4. Heard Mr. P.K.Mishra, learned counsel for the petitioner, Mr. S. Behera, learned AGA for the State and Mr. S.C.Mishra, learned counsel appearing for the Opposite Party No.2.

5. Mr. P.K.Mishra would argue that the impugned order is unsustainable in the eye of law as it does not disclose the reasons for rejecting the petition for discharge.

6. Mr. Behera, learned AGA would submit that there being a prima facie case available against the petitioner, the Court has rightly refused to discharge him from the case.

7. Mr. S.C. Mishra would submit that the Court below upon consideration of the prima facie evidence during the inquiry under Section 202 of Cr.P.C. took cognizance of the offences. The petitioner has not been able to demonstrate that there is



no prima facie case against him. The application for discharge was therefore, rightly rejected.

8. Reference to the impugned order reveals that after relating the relevant facts the Court below has referred to the relevant statutory provision namely, Section 245 of Cr.P.C. Thereafter, the Court below abruptly held that the evidence of the witnesses, FIR, Chargesheet and adjoining documents prima facie attract the alleged offences and that the allegations made by the prosecution are not groundless. On such ground, the discharge application was rejected. Not a whisper has been made as to why the grounds urged by the petitioner to discharge him from the case were considered unacceptable. In fact, copy of the discharge petition available in the case record shows that the petitioner had raised specific grounds and tried to justify the same by giving detailed reasons. Whether the same would ultimately be acceptable or not is a thing that can be decided only if the same is considered. But without even considering the



grounds raised, it cannot be said that there are no grounds to discharge the petition.

9. It would be apposite at this stage to quote Section 245 of Cr.P.C., which reads as follows:

“Section 245. When accused shall be discharged.—

(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.”

10. Though it has been held that the Court is not required to record reasons for framing charge but it is the settled position of law that rejection of a discharge petition and framing of charge are not one and the same thing. It is only after an application for discharge is dealt with that the question of framing charge arises. The language used in Section 245, “*and record his reasons for so doing*” cannot refer only to a case where the application for discharge is allowed and not when the same is rejected. In a similar case



decided by this Court, that is, **Shibaram Sahu vrs. State of Odisha (Vigilance) Department**¹ this Court held as follows:

“Evidently, while dealing with the petition for discharge, the court has jumped to the next stage, i.e., framing of charge and taking into account the considerations required for the latter stage, has rejected the petition for discharge. It is reiterated that when an application for discharge is filed, the same has to be disposed of by a reasoned order, which is clear from the use of the expression “and record his reasons for so doing” in Section 239 which obviously cannot refer only to a case where the application for discharge is allowed but not when the same is rejected. Obviously the statutory intent cannot be understood in a manner that the Court is to record its reasons only when allowing the petition but not when rejecting it. Such a proposition would be absurd. In the instant case, the petitioner had raised two grounds while seeking discharge, namely, absence of valid sanction and absence of necessary ingredients to constitute the offence of Section 409 IPC. It was therefore, incumbent upon the court below to specifically deal with the two grounds and to state as to why such grounds are acceptable or not acceptable. To amplify, the Court ought to have given its findings as regards the validity of sanction as also the existence or otherwise of the essential ingredients of the offence under Section 409 IPC.

*In view of the statutory mandate discussed above, it will not do for the court to simply make a bald observation as quoted hereinabove while dealing with the application for discharge. What the Court cited as reason to reject the apprehension is actually supposed to be the reason for framing charge, the stage of which had not yet come. In this regard, a reference can be made to the case of **L. Muniswamy** (supra)*

“xxxxxxxxxx. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons

¹ 2021 SCC OnLine Ori 2057



for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused.
(Emphasis supplied)

It is therefore, abundantly clear that it is incumbent upon the court to record its reasons for accepting or not accepting the specific grounds urged by the accused to discharge him from the case.”

11. In view of what is discussed above, it is evident that the impugned order falls short of the above salutary requirement of law by a long margin and therefore, cannot be sustained.

12. For the foregoing reasons therefore, the CRLMC is allowed. The impugned order is set aside. The matter is remitted to the Court below to consider the application for discharge filed by the petitioner afresh and to dispose of the same by passing a reasoned order.

.....
Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
Deepak

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