

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3270 of 2015

Siba Sankar Mohanty

....

Petitioner

Mr. Anirudha Das, Advocate

-Versus-

State of Odisha and Another

....

Opposite Parties

Mr. Tapas Kumar Praharaj, SC

CORAM:
JUSTICE R.K. PATTANAIK

DATE OF JUDGMENT:02.05.2023

1. Instant petition under Section 482 Cr.P.C. filed by the petitioner assailing the impugned order dated 2nd January, 2015 passed in connection with G.R. Case No. 1652 of 2014 by the learned SDJM, Panposh, Rourkela whereby cognizance of the offences under Sections 341,323 & 354 IPC besides Section 3(x) SC & ST (PoA) Act have been taken and consequently summoned him on the grounds inter alia that the same is untenable in law morefully when the prosecution is being maliciously initiated at the behest of opposite party No.2.

2. In fact, opposite party No.2 lodged an F.I.R. dated 17th July, 2014 in connection with an incident involving the petitioner, who by then was the Headmaster of the named school. The informant alleged that on the date of occurrence i.e. 17th July, 2014, the petitioner, who was approached for correction of her daughters' School Leaving Certificate (SLC) in which name of her husband has wrongly mentioned, at that time, she was misbehaved and even assaulted by him consequent upon which Sundargarh P.S.

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Case No. 62 was registered and finally on completion of investigation, the chargesheet was submitted whereupon the learned court below by order dated 2nd January, 2015 took cognizance of the alleged offences which is under challenge at present.

3. Heard Mr. Das, learned counsel for the petitioner and Mr. Praharaj, learned counsel for the State-opposite party No.1

4. Despite service of notice, opposite party No.2 did not turn up.

5. Mr. Das, learned counsel for the petitioner submits that with false allegations, the F.I.R. was lodged by opposite party No.2. It is further submitted that the petitioner joined as the Headmaster of the school and since the time of joining, the Managing Committee with help of some employees of the school created nuisance for him, the fact which was intimated to the superior authority including the local police on 14th April, 2014. In fact, it is claimed by the petitioner that opposite party No.2 did the mischief at the behest of the Managing Committee of the school and lodged the report by making false allegations against him.

6. Mr. Das, learned counsel for the petitioner refers to a dispute for which the petitioner was not allowed to join in the school and in that connection, W.P.(C) No. 445 of 2014 was filed by the him which was disposed of by order dated 19th March, 2014 vide Anneuxre-2. It is alleged that the informant had already taken the SLC of her daughter before joining of the petitioner and hence, there was occasion for him to carry out the correction, if any but then for the obvious reasons, the Managing Committee and others who are inimically disposed of towards him in connivance with the informant manage to lodge the F.I.R. Under such circumstances, according to Mr. Das, the criminal action at the instance of opposite party No.2 since prima facie found to be CRLMC No.3270 of 2015

malicious, the impugned order under Annexure-5 as well as the entire of the criminal proceeding should be quashed by the Court in exercise of its inherent jurisdiction.

7. Mr. Praharaj, learned counsel for the State-opposite party No.1, on the other hand, submits that an investigation was held later to the F.I.R. lodged by opposite party No.2 and the incident was prima facie found to be proved and established against the petitioner and hence, it resulted in submission of chargesheet and considering the materials submitted along with chargesheet, the learned court below took cognizance of the alleged offences which is perfectly justified and in accordance with law and hence, calls for no interference.

8. On a bare reading of the F.I.R., a copy of which is at Annexure-1, the Court finds that the alleged incident took place on 17th July, 2014 and at that time, the informant had requested the petitioner to carry out the correction in the SLC of her daughter with regard to the name of her father and in that connection, she was abused and assaulted.

9. According to the petitioner, he is a victim of malicious prosecution and while claiming so, Mr. Das, learned counsel appearing for him refers to a copy of this Court's order in W.P.(C) No. 4415 of 2014. The intimation of the petitioner to the immediate superior with the apprehension expressed about some of the employees of the school likely to commit mischief is at Annexure-3 series which is also referred to by Mr. Das. That apart, the petitioner himself lodged a complaint against the informant and three others with regard to the same incident dated 17th July, 2014. The said complaint a copy of which is at Annexure-6 is said to have been filed on 25th August, 2014. However, as it appears, the informant-opposite party No.2

promptly lodged the F.I.R. on 17th July, 2014 itself. The petitioner with the counter allegation against the informant and others filed the complaint not immediately but in the month of August, 2014 almost after a month from the date of incident. As it is made to understand from Annexures 2,3 & 6 that the parties are in inimical terms and there is allegation by the petitioner regarding involvement of some of the staff of the school including the Managing Committee. Notwithstanding any such hostile relationship with the parties, considering Annexure-1, the Court finds that opposite party No.2 was alleged to have been misbehaved and said to be assaulted by the petitioner. The informant-opposite party No.2 is an employee of the school where the petitioner was posted as the Headmaster by then. The allegations of opposite party No.2 was enquired into and investigated upon and finally, the chargesheet was filed.

10. Mr. Praharaj, learned counsel for the State-opposite party No.1 submitted the case diary along with relevant documents including the statements of the witnesses recorded under Section 161 Cr.P.C. In fact, on consideration of the evidence collected during investigation submitted along with chargesheet, the Court finds that a prima facie case to have been made out against the petitioner, who allegedly committed the overt acts during the incident dated 17th July, 2014. Whether the allegations so made against the petitioner are truthful or otherwise can only be gone into during trial after the evidence is received from the side of the prosecution and defense. From the case diary, the Court also finds that opposite party No.2 belongs to Scheduled Caste community as it was duly intimated by the Tahasildar, Rourkela to the Deputy Superintendent. Zone-1, Chhend, Rourkela vide letter dated 17th July, 2014. It has been alleged that the petitioner abused the opposite party No.2 by taking name of her caste

'Ganda' and when there is evidence on record to prime facie establish it, the Court is of the view that the defense of the petitioner can only be examined during trial. No doubt, the petitioner filed a complaint for the same incident and alleged malicious prosecution against opposite party No.2. However having regard to the facts on record, the Court is of the conclusion that whether the allegations to be true or false should be left to the decision of the learned court below. The claim of malicious prosecution of the petitioner did not find favour with as the local police submitted the chargesheet without whispering anything about the same. So therefore, all such defense shall have to be examined by the trial court considering the evidence received from both the sides.

11. Mr. Das, learned counsel for the petitioner submits that offence under Section 3(x) SC& ST (PoA) is not made out since the incident has not occurred in public place but inside the school premises and while contending so, Mr. Das, learned counsel for the petitioner cites a decision in **Nalini Acharya @Naliniprava Acharya & Others Vrs. State of Odisha and Another (2022) 87 OCR 210**. As it is made to understand from the case diary though the occurrence has taken place at the school which is a public place but then many of its employees were present at the spot. The petitioner as it is also alleged to have misbehaved others during the occurrence some of whom are arrayed as accused in the complaint filed by him registered as I.C.C. Case No. 356 of 2014. So, therefore, the alleged incident apparently occurred not inside anyone's house or at a private place but inside the premises of the School which in any case is a public place. Nevertheless, whether an offence under Section 3(x) SC & ST (PoA) has been committed by the petitioner is again a matter of examination and scrutiny during trial.

12. As to the enmity between the parties, law is well settled that it is always a double edged weapon. On account of enmity, there is no doubt possibility of levying false and malicious prosecution. But then, at the same time, real occurrences do take place due to such enmity. Whether in the present case, due to such personal enmity, a false F.I.R. was lodged by opposite party No.2 or otherwise notwithstanding filing of the chargesheet shall have to be tested on the floor of the Court. To sum up, the Court, in the facts and circumstances of the case, considering the evidence received during investigation and that opposite party No. 2 was medically examined on police requisition and she said to have received a bruise on the forehead allegedly on account of the assault which she claimed against the petitioner, a prima facie case is made out for enquiry and trial leaving the learned court below to examine the defense as to malicious prosecution. Having said that, the Court is not inclined to quash the impugned order under Anneuxre-5 as it has been pleaded for by the petitioner since the grounds raised are purely factual which needs determination during and in course of trial.

13. Accordingly, it is ordered.

14. In the result, CRLMC stands dismissed.

(R.K. Pattanaik)
Judge

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