

HIGH COURT OF ORISSA : CUTTACK

CRLMC No.1557 of 2020

In the matter of an application under Section 482 of the Code of Criminal Procedure.

M/s.Odisha Infratech Pvt. Ltd.
and others Petitioners

Versus

State of Odisha and others Opposite Parties

For Petitioners - Mr.S.S.Das,
Sr.Advocate

For Opp. Parties - Mr.J.Pattnaik, A.G.A.
(For O.Ps.1 & 2)

- Mr.Millan Kanungo,
Sr.Advocate
(For O.P.3)

J U D G M E N T

PRESENT :

THE HONOURABLE SHRI JUSTICE B.P.ROUTRAY

Date of Hearing:13.11.2020 : Date of Judgment:20.11.2020

B.P.ROUTRAY, J. The petitioners, with prayer to quash the F.I.R. in E.O.W. Bhubaneswar P.S.Case No.08 dated 31.10.2020 (Annexure-1) and further proceedings in T.R.No.414 of 2020 pending before the learned Sessions Judge-cum-Special Judge, Khurda at Bhubaneswar, have preferred the present case invoking Section 482 of the Cr.P.C.

2. Originally, petitioners No.1 to 3 have filed the CRLMC and then petitioners No.4 & 5 joined. Petitioner No.1 i.e., M/s. Odisha Infratech Pvt. Ltd. a company registered under the Companies Act was initially represented by petitioner No.2 as the Director of the company. Petitioner No.3 was one of the employee of the company. In the meantime petitioners No.2 and 3 have withdrawn their position from the company as well as from the case. Petitioner No.2 in his memo of withdrawal dated 13.11.2020, has withdrawn himself as petitioner No.2 and his representation to petitioner No.1 company by stating that he has resigned from the post of CFO of the company as well as the Directorship of the company. Accordingly, by order dated 13.11.2020 he was deleted from the present case. Petitioner No.3 in his memo dated 16.11.2020 submits for his withdrawal from the case. Further, taking note of the development in situation, I.A.No.1097 of 2020 has been filed by petitioner No.4 on 16.11.2020 praying to allow her to represent petitioner No.1 company, she being one of the promoters of petitioner No.1 company.

3. Bereft of the development happened on 16.11.2020, in view of the withdrawal of petitioner No.2 from the case on 13.11.2020, an objection was raised by opposite party No.3 that, the present case by petitioner No.1 is not maintainable since

petitioner No.2, who was representing petitioner No.1, has not only withdrawn himself from the case, but also resigned from the Directorship of petitioner No.1 company. In reply to the said objection, it is submitted on behalf of the rest of the petitioners that, upon resignation of petitioner No.2 from his position in the company, a new Director is required to be appointed as per the procedure, which may take some time. Therefore, his resignation from the company and withdrawal from the case does in no way affect the maintainability of the case for petitioner No.1 company. Moreover when both promoters of the company are there on record as petitioners No.4 and 5, any one of them can represent the company and these sheer technicality should not stand on the way to decide the case on merit.

4. At this juncture before delving further into the case, in view of the objection raised by opposite party No.3 and the developments took place on 13.11.2020 and 16.11.2020, I would like to hold at the outset that, petitioner No.3 in addition to petitioner No.2 is deleted from the case and petitioner No.4 is allowed to represent petitioner No.1 company as prayed for in I.A.No.1097 of 2020. It is for the reason that a company or a corporate entity is an artificial person which acts through its officer, Directors, Managing Directors, Chairman etc. So at no

point of time, it will go unrepresented. When petitioners No.4 and 5, who are the undisputed promoters or owners of petitioner No.1 company, are already there on record and prays to represent the company, no reason is found to disallow their representation for the company. Because when a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. Thus petitioner No.4 is allowed to represent petitioner No.1 and the present CRLMC is confined to petitioner nos.1, 4 and 5 only.

5. So far the objection raised by opposite party No.3 regarding affidavit sworn by Advocate's Clerk in the petition, the same is not found sustainable. On the other hand, the prayer of opposite party No.4 in I.A.No.1097 of 2020 to accept such affidavit, is found supported in terms of Rule 4 of Chapter VI read with Rule 1 of Chapter XVIII of the Orissa High Court Rules, 1948 and as a matter of precedence in practice in this Court.

6. Now coming to the merits of the case, the factual aspects sans unnecessary details, are stated as follows:-

Petitioner No.1, namely, Odisha Infratech Pvt. Ltd. is a company registered under the Companies Act and situating at Chandaka Industrial Estate, Bhubaneswar. Petitioners No.4 and 5

are the promoters and owner of the said company. The deleted petitioners No.2 and 3 were the Directors and employees respectively of the said company. The F.I.R. under Annexure-1 was lodged by the Additional Superintendent of Police, Economic Offence Wing, Bhubaneswar on 31.10.2020 by alleging therein that, opposite party No.3, Rabindra Kumar Sethi joined as a driver in M/s. ORTEL Communication Ltd., which is associated with petitioner No.1 company. The said opposite party No.3, who is 'Dhoba' by sub-caste coming within scheduled caste category, joined in the year 1999 with initial salary of Rs.800/- per month and became permanent in the year 2007. He is a poor fellow having no property except the homestead land in his native village and he quit the job from the company in January, 2017 as the company defaulted in paying his salary for four months. Petitioner No.1 company purchased the land to the extent of Ac.7.294 dec. in mouza-Sarua and Loknathpur under Begunia Tahasil of Khurda district from opposite party No.3 by executing three sale deeds on 21.5.2016, 2.8.2016 and 11.9.2019 for total consideration amount of Rs.65,32,100/-, though no actual amount is paid. It is further alleged that the said lands were originally recorded in the names of scheduled caste persons, which were purchased by opposite party No.3 during the period from 22.6.2010 to 1.3.2013 from twenty

two scheduled caste persons upon execution of many sale deeds at very low price, which is 50% lesser than the bench mark valuation.

It is thus alleged that petitioner No.1 company with the aid of deleted petitioners No.2, 3 and others by hatching the criminal conspiracy grabbed the lands of scheduled caste persons for the benefit of company, taking advantage of the suppressed position of opposite party No.3 and his financial, social and educational backwardness as well as of all the original tenants. It is also alleged that not only petitioner No.1 company along with others defrauded the original tenants to grab their lands, but also the opposite party No.3, who is also a scheduled caste person, by intimidating him for execution of the sale deeds as an intermediary purchaser in a fraudulent way. Accordingly, F.I.R. was registered for commission of offences under Sections 420/423/467/468/471/120-B of the I.P.C. and Sections 3(1)(g) and (q) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. This triggered the investigation and in the process, petitioners No.2 and 3 were arrested. The deleted petitioner No.2, who was then functioning as the Director-cum-CFO of petitioner No.1 company, has been released on bail in the meantime by the

learned Sessions Judge-cum-Special Judge, Khurda at Bhubaneswar.

7. Shri Das, learned Senior Advocate appearing for the petitioners contends that registration of the F.I.R. at the instance of the Additional Superintendent of Police is nothing but a malice by the Government of Orissa against petitioner No.1 company to settle the score as M/s.Odisha Television Ltd.,(OTV) of which petitioners No.4 and 5 are also owners, had broadcasted a conversation of two friends relating to COVID Hospital experience. It is further submitted that all the offences alleged either under the Indian Penal Code or under the atrocities act are not made out and at best the alleged action may attract offence under the Prohibition of Benami Property Transactions Act, 1988. Further, the alleged violation of the provisions of the Odisha Land Reforms Act shall not be affected against a company for presence of the exception clause in Sec.73 of the said act. Again as per his submission, this is a fit case which satisfies all most all seven principles enumerated in Bhajanlal's case (State of Haryana and others vs. Bhajanlal and others) reported in 1992 Supp (I)SCC 335.

8. The substance of submissions of the petitioners are that, the allegations made in the F.I.R., even if they are taken at

their face value and accepted in entirety do not prima facie constitute any offence or make out a case against the petitioners. Even the allegations in the F.I.R. along with other accompanying materials do not justify any investigation. The allegations made in the F.I.R. are so absurd and inherently improbable that no prudent person can ever reach a just conclusion of existence of sufficient ground for proceeding against the accused. The criminal proceeding is manifestly attended with malafidness and ulterior motive. Further, the registration of the F.I.R. at the behest of the EOW Crime Branch and subsequent investigation by the said investigating agency is without jurisdiction in view of the fact that Charter of duties in the Government of Odisha Home Department Resolution No.6685 of 17.2.2012 does not authorize the EOW to investigate any offence concerning the provisions of S.C./S.T. Act and the Prohibition of Benami Property Transactions Act, 1988, and the S.P. EOW in a press release dated 5.11.2020 has declared that the matter has been referred to Income Tax Department for investigation.

9. Shri J. Pattnaik, learned Additional Government Advocate appearing for opposite parties 1 and 2 submits that, upon lodging of the F.I.R., investigation has commenced as per law and the requirements of law are to be looked into by the

investigating authority. Moreover, the investigation presently is at the nascent stage and any interference as such is not warranted. A bare reading of the F.I.R. speaks of the unlawful activities itself, which are supported by the statements of the victims. The grounds so far argued by the petitioners are not at all sustainable for the reason of abundance of materials in commission of the offences. Further, violation of law either under the Prohibition of Benami Property Transactions Act or under the Odisha Land Reforms Act are separate issues to attract liabilities thereunder and such violation under those laws will not exonerate commission of offences under the Indian Penal Code or other penal laws. On that score, he prays for dismissal of the case.

10. Shri Kanungo, learned Senior Advocate for opposite party No.3 while supporting the arguments of Shri Pattnaik, submits that the petitioners by using their dominant position have defrauded and cheated the innocent poor members of scheduled caste community, morefully opposite party No.3, who had served for petitioner No.1 company as a driver once upon a time. He was compelled and forced to sign on different papers by the company authorities at the cost of his arrear salary taking advantage of his poor employment status. It is submitted by him that the petitioners have done all such illegal activities by using opposite party No.3 as

an intermediary in grabbing the land of the members of his community by threat and intimidation. As such, he prays for rejection of the prayer of the petitioners so that law would proceed against the petitioners and their high handed actions.

11. Perusal of the F.I.R. in bare eyes speaks that petitioner No.1 company through its different authorities and others has purchased the land in question from twenty two vendors, who all belong to scheduled caste community through opposite party No.3, who is also a member of scheduled caste community and then transferred it to the name of petitioner No.1 company. What is admitted that, the entire patch of land measuring Ac.7.294 decs. was originally recorded in name of twenty two vendors of scheduled caste community in different patches and further, opposite party No.3 is also a member of scheduled caste community and he worked as a driver in the petitioner No.1 company. It is also not disputed of the total consideration amount of Rs. 65,32,100/- for the said patch of land. The statement of opposite party No.3 recorded by the police under Section 161 Cr.P.C. (as filed by the petitioners) also fully supports the allegations made in the F.I.R. It is not the case of the petitioners that at any point of time said opposite party No.3 was paid the entire consideration amount by the company either in cash or in any other mode. Opposite party

No.3, who is a very poor man, is presently selling Fast-Food in a road side shop as per his statement. It is the further case of the prosecution that the alleged consideration amount shown for sale transactions of the land is at 50% lesser price than the bench mark valuation. Thus, two questions arise here that, whether upon threat and intimidation by suppressing the position of opposite party No.3 as a low paid employee of the company and a member of SC community, the petitioners along with others had conspired to get the land purchased by opposite party No.3, and whether the original twenty two vendors of the land in question have been duped with non-payment of actual and full consideration value. Besides these, the further question arose, whether all such vendors including opposite party No.3 have been pressurised in a fraudulent or dishonest way to transfer their land in favour of the company.

12. On the question of fact, the allegations are clear and candid to speak against the petitioners. Here, it is useful to quote the relevant passages as observed by the Hon'ble Supreme Court in Bhajanlal's case. Those are:-

“40. The core of the above sections namely 156, 157 and 159 of the Code is that if a police officer has reason to suspect the commission of a cognizable offence, he must either proceed with the investigation or cause an investigation to be proceeded with by his subordinate; that in a case where the police officer sees no sufficient ground for investigation,

he can dispense with the investigation altogether; that the field of investigation of any cognizable offence is exclusively within the domain of the investigating agencies over which the courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation and that it is only in a case wherein a police officer decides not to investigate an offence, the concerned Magistrate can intervene and either direct an investigation or in the alternative, if he thinks fit, he himself can, at once proceed or depute any Magistrate subordinate to him to proceed to hold a preliminary inquiry into or otherwise to dispose of the case in the manner provided in the Code.

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102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 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 of 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 channelised 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 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 continuance of the proceedings and/or 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 mala fide 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

13. The offences alleged in the present case are under Sections 420/423/467/468/471/120-B of the I.P.C. and Sections 3(1)(g) and (q) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. What is argued by the petitioners that, the allegations made in the F.I.R. even at their face value do not constitute any offence or make out a case against the petitioners or do not justify investigation, are not found correct on facts. To substantiate their contentions in this regard, the petitioners rely on several decisions, viz. **Raj Kishun Sah and Ors. vs. State of Bihar**, 2018 CriLJ 1569, **Devisingh and Ors vs. State of M.P.**, 2003 CriLJ 147, **Sheila Sebastian vs. R.Jawaharaj and Ors.**, AIR 2018 SC 2434, **Janak Dulari Devi and Ors. vs. Kapildeo Rai and Ors.**, (2011) 6 SCC 555, **Vidhyadhar vs. Manikrao and Ors.**, (1999) 3 SCC 573, **Md.Ibrahim and Ors. vs. State of Bihar and Ors.**, (2009) 8 SCC 751 and **Parminder Kaur vs. State of U.P. and Ors.** (2010) 1 SCC 322. All those decisions need not be discussed here substantially. Looking into the definition of 'cheating' enumerated in Section 415 of the I.P.C., the definition of 'dishonestly' and 'fraudulently' as enumerated in Sections 24 and 25 respectively of the I.P.C., it is understood that the ingredient of all the alleged offences of the I.P.C. is prima facie made out from the recital of the

F.I.R. Because the allegations prima-facie reveal total non-payment of consideration amount to opposite party No.3 and lesser payment to those twenty two original vendors of the land in question. Moreover, the statements of opposite party No.3 and other witnesses are seen adding material to substantiate those allegations. In the context of the allegations, it is seen that, the petitioners used opposite party No.3 as an instrument or to say, as the 'sham purchaser' to get the land in their favour. When the investigation is still continuing and at the beginning stage, the contention that materials are not justifying for investigation is thus not found correct. It also cannot be said that the allegations are so absurd or inherently improbable.

14. Learned counsel for the petitioners though empathetically argues that the story alleged in the F.I.R. has been maliciously instituted with an ulterior motive at the behest of the ruling political party, but the same is not found with supported materials. It may be a separate fact that many other cases might have been lodged against the company and its authorities, which are required to be looked into separately in their respective context, but not ipso-facto suggest the present case as a malicious one against the petitioners in absence of specific material in support of such contention. Therefore, the submission that the prosecution at

the behest of the ruling political party is acting with malice or mala fide motive is bound to be rejected. What are required to be seen, is the nature of allegations and the probability of the materials supporting the same whether constitute the offences and make out a case in justifying the investigation. Here in the present case, when there is no proof of payment of consideration amount for the land transaction to opposite party No.3 and he says that he has been threatened and intimidated to sign the documents or blank papers by the company and its authorities without any scope of knowing on what documents he has been compelled to sign or for what purpose, the contention of mala fide motive is found untrue.

15. The submission that the allegations at best make out a case under the Prohibition of Benami Property Transactions Act or in violation of the provisions of the Odisha Land Reforms Act, is not making any substance in favour of the petitioners. It is for the simple reason that constitution of offence under the Prohibition of Benami Property Transactions Act is definitely in addition to the offences under other laws. Further, for violation of provision of the Odisha Land Reforms Act, if any is there, the liability accrued is certainly different than the culpability inherent for the offences alleged.

16. It is strenuously argued by the petitioners that none of the offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act though is not made out or constituted, but the same has been deliberately added only to deprive the petitioners from the benefit of provisions for anticipatory bail. To verify this submission, if the explanation of word 'wrongfully' as appearing in Section 3(1)(g) is looked into, it would be clear that the allegations are definitely fall within the said clause. The most prominent reason is that admittedly the land in question was originally contained by scheduled caste members before being transferred in the name of the company and in between stands opposite party No.3 as a member of scheduled caste community to whom the consideration amount was not paid at all. The entire suspicion hovers around is standing of opposite party No.3 in the transaction of land in favour of the company. Undoubtedly the recitals of the F.I.R. are prima facie disclosing not only offences committed against opposite party No.3 but also it can attract the offences against those twenty two original vendors. Thus in my considered opinion, the allegations prima facie satisfies the ingredients for offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

17. The further contention of the petitioners that EOW has lost its jurisdiction as an investigating agency to enquire/investigate into the matter in view of its press release requesting the Income Tax Department to investigate into the benami transactions, is not found with any substance because the said press release (Annexure 1/1) is seen to be a request for investigation by I.T. Department in addition to the present investigation by the Economic Offence Wing and not in derogation of its own jurisdiction. Needless to say that perusal of resolution dated 17.2.2012 of Government of Odisha (under Annexure 1/2) falsifies the contention of the petitioners that EOW has no authority to investigate into present nature of case. As seen from the said resolution EOW is a part of C.I.D., C.B. of State Police and its charter of duties authorizes EOW to investigate into different nature of cases including cases of cheating, forgery and land fraud. The mandate under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act neither excludes jurisdiction of any special wing of police nor postulates for any specific wing of police to investigate the offences therein, but requires that every investigation into the offence must be done by an officer not below the rank of Deputy Superintendent of Police. When the present investigation is not disputed to be conducted by any officer not

below the rank of Deputy Superintendent of Police, no illegality, irregularity or loss of jurisdiction is found with the investigation by the Economic Offence Wing. Therefore every argument laid on this score is found misconceived and without substance.

18. In view of the discussions made above, I am not inclined to interfere with the criminal proceeding, more particularly at the stage of pending investigation and accordingly, the prayer of the petitioners is rejected and the Criminal Misc. Case is dismissed.

All the interim orders passed stand vacated.

Copy of this judgment be uploaded in the High Court's official website as per Court's Notice No.4587, dated 25.03.2020.

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B.P.Routray, J.

