

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3329 of 2022

Bichitra Pradhan and others ... Petitioners

Mr.D.K. Sahoo, Advocate

-versus-

State of Orissa and another ... Opposite Parties

Mrs. S.R. Sahoo, ASC

Mr. A.Mishra, Adv.(OP-2)

CORAM:

JUSTICE G. SATAPATHY

DATE OF JUDGMENT : 11.10.2023

G. Satapathy, J.

1. This application U/S. 482 of the code of criminal procedure, 1973 (in short the "Code") by the Petitioners seeks to challenge the order passed on 16.05.2022 by learned JMFC, Rajnagar, Kendrapara in 1CC Case No. 6 of 2022 taking cognizance of offences punishable U/Ss. 498-A/294/323/313/328/417/506/34 of IPC read with Section 4 DP Act.

2. It appears from the record that pursuant to an FIR, Rajnagar PS Case No. 283 of 2021 was registered against the Petitioners for commission of offences punishable U/Ss. 498-A/294/323/307/417/506/34 of IPC read with Section 4 DP Act and the matter was accordingly investigated into, resulting in submission of charge-sheet against the Petitioners for offences punishable U/Ss. 498-A/294/323/506/406/34 of IPC read with Section 4 DP Act. Accordingly, cognizance was taken for aforesaid charge sheet offences and the learned JMFC, Rajnagar, Kendrapara by an order passed on 12.04.2022 in G.R. Case No.331 of 2021 framed charge against the Petitioners for aforesaid offences. While the matter stood thus, on 20.04.2022 the Informant in Rajnagar PS Case No.283 of 2021 being dissatisfied with the result of the investigation filed a protest petition in 1CC Case No. 6 of 2022 and the learned NGN-cum-JMFC, Rajnagar, Kendrapara recorded the initial statement of the

complainant and the statement of three witnesses in the enquiry U/S. 202 Cr.P.C. After being satisfied with the materials placed on record in the complaint together with initial statement and statement of witnesses in 1CC Case No.06 of 2022, the learned NGN-cum-JMFC, Rajnagar, Kendrapara again took cognizance of offences punishable U/Ss.498-A/ 294/ 323/313/328/417/506/34 of IPC read with Section 4 DP Act by the impugned order which is under challenge in this CRLMC.

3. Mr. D.K. Sahoo, learned counsel for the Petitioners has submitted that law is very well settled that cognizance of offence can be taken once in a case, but not twice and, thereby, the impugned order passed by the learned NGN-cum-JMFC, Rajnagar, Kendrapara being unsustainable in the eye of law is required to be set aside.

4. On the other hand, Mr. A. Mishra, learned counsel appearing for OP No.2 has submitted that since the Investigating Agency has not investigated

the matter properly necessitating the Informant to file the complaint in which the learned NGN-cum-JMFC, Rajnagar, Kendrapara after recording the initial statement of the complainant and statement of witnesses in enquiry U/S. 202 Cr.P.C. has considered the material placed on record in proper prospective and, thereby, taking cognizance of offences which was earlier not taken because of the improper investigation cannot be legally questioned. Mr. Mishra, accordingly, has submitted that there is no question of illegality being committed by the learned NGN-cum-JMFC, Rajnagar, Kendrapara and the impugned order, therefore, cannot be set aside or varied. Mr. Mishra, has, accordingly, prayed to dismiss the CRLMC.

5. Be it noted, the matter was earlier heard by this Court, but today the same was listed under the heading of "to be mentioned" on being mentioned by learned counsel for OP No. 2 to further argue the matter.

6. In criminal jurisprudence, the role and duty of a Magistrate competent to take cognizance of offence on receipt of police report U/S. 173(2) Code of Criminal Procedure, 1973 (In short, "Cr.P.C.") has been objectively outlined by the Cr.P.C since such Magistrate is normally the interface between the investigating wing and the Court at first point of time irrespective of the offence being triable by Magistrate or Court of Session, but not for an offence under Special Act. One or more of the situations detailed below which is not exhaustive, however, may arise before a Magistrate competent to take cognizance of offence on receipt of police report as referred to above,

(i) *FIR is registered against one or some persons, but police report U/S. 173(2) of Cr.P.C is submitted against one or more of the said persons or other person(s).*

(ii) *FIR is registered against some persons, but final report U/S. 173(2) of Cr.P.C is submitted against those persons.*

(iii) *FIR is registered for some offences, but police report U/S. 173(2) of Cr.P.C is*

submitted for some other offences or lesser offence.

In dealing with aforesaid three situations, the competent Magistrate may have three alternative options, either to agree with the police report or disagree with such report or direct further investigation in the matter, but whatever may be the situations, the informant is entitled to know the result of the investigation in terms of Section 173(2)(ii) of the Cr.P.C. Additionally, in case the Magistrate disagrees with the police report in situation No. (i) or accepts the police report in situation No.(ii) indicated above, and decides not to take cognizance of offence(s) and to drop the proceedings by concluding that no offence is found to have committed upon consideration of the police report or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the FIR as contemplated in situation No.(i), he(Magistrate) is required to give notice to the informant and provide the informant an

opportunity of being heard at the time of consideration of the report. However, the Magistrate without giving notice to the informant, may take cognizance of offence(s) and issue process against the accused person(s), whose name(s) commonly find place both in the FIR and police report, if he agrees with it in situation No.(i), but if the Magistrate disagrees with the police report in situation No. (ii) and considers upon consideration of police report that offence has been committed, he may take cognizance of offence(s) without giving notice to the informant. In situation No.(iii), the Magistrate upon consideration of police report may take cognizance of offence(s), which is/are constituted, but in such situation, the informant may take objection against the result of investigation as to the offence in final report by way of protest petition till cognizance is taken or in case cognizance is set aside or varied by higher forum, however, the objection as to the offence(s) by way of protest

petition may not be entertained after cognizance is taken since cognizance is taken once in a criminal case.

7. The object of notice as discussed above or the communication of result of investigation in terms of Section 173(2)(ii) of the Cr.P.C. is to afford an opportunity to the informant to take objection to the situations by which the informant may be aggrieved. In a criminal case, the Magistrate is sufficiently empowered by the Cr.P.C. to take cognizance of offence(s) in a situation even after submission of final report in which investigation by police has not found out commission of any offence against the accused person and in such case, the Magistrate is not bound to follow the procedure laid down in Section 200 & 202 of Cr.P.C. which are although available to him, but the Magistrate may act upon the aforesaid provisions on the protest petition of the complainant. Besides, the Magistrate is not debarred to take cognizance of offence(s) on a

protest petition merely because he had earlier refused to take cognizance of offence(s) upon receipt of police report, but he may not take cognizance of offence(s), if the informant upon being noticed accepts the results of the investigation. However, in case the informant files a protest petition after acceptance of final report, the Magistrate on being satisfied with the materials produced before him upon following the provision of Section 200 & 202 of Cr.P.C. may take cognizance of offence(s) **(AIR 2002 SC 483)**.

8. Admittedly, two cognizance orders have been passed by the same Court on different dates in the present case. Firstly, the learned NGN-cum-JMFC, Rajnagar, Kendrapara on receipt of charge-sheet in Rajnagar PS Case No. 283 of 2021 had taken cognizance of offences punishable U/Ss. 498-A/294/323/506/406/34 of IPC read with Section 4 DP Act by way of an order passed on 15.12.2021 in G.R. Case No. 331 of 2021 and on 12.04.2022

charge was framed against the Petitioners for said offences by the same Court. Pursuant to framing of charge and being dissatisfied with the result of the investigation, the Informant filed protest petition in 1CC Case No. 6 of 2022 in which the learned JMFC vide his order passed on 16.05.2022 again took cognizance of the offences punishable U/Ss. 498-A/ 294/ 323/ 313/ 328/ 417/506/34 of IPC read with Section 4 DP Act and tagged the GR Case record No. 331 of 2021 with the case record in 1CC Case No. 06 of 2022 and directed the complainant to file requisites for issuance of process against the Petitioners, out of whom Mitanjali Pradhan, Sujata Pradhan and Rabindra Pradhan, whose names were included in the FIR, but they were not charge sheeted in G.R. Case No. 331 of 2021. It is also strange that the learned NGN-cum-JMFC, Rajnagar although directed the complainant by the impugned order in a cryptic way to file requisites for issuance of processes against said accused persons without

mentioning their names, but the same creates confusion since earlier charge was framed against three accused persons. Neither the complainant-OP No.2 challenged the earlier order taking cognizance of offence in any forum nor did produce any materials in the present case to indicate that the informant was not noticed from the Court while not proceeding against the three persons named in the FIR, but not included in Col. No.2 of police report U/S. 173(2)(i)(d) of the Cr.P.C.

9. Law is fairly well settled that cognizance of offence can be taken once in a case, but it is not permissible to take cognizance of offences for multiple times and the best stage to add or subtract the offences is at the time of consideration of charge. Besides, Section 216 of Cr.P.C. provides for alteration or addition of charge at any time before pronouncement of judgment, but in this case, the learned NGN-cum-JMFC, Rajnagar, Kendrapara misapplied the law by taking cognizance of offence

in the protest petition in ICC No. 06 of 2022 subsequently after taking cognizance of offence on police report in G.R. Case No. 331 of 2021 in the same case. Whether taking cognizance of offence for second time without the same being set aside or varied was settled by the Apex Court in the decision in ***Dharam Pal & Others Vrs. State Of Haryana & Another; (2014) 3 SCC 306***, wherein a Constitutional Bench of five judges of the Apex Court has held as under:-

"39. Xxx xxx It is well settled that **cognizance** of an offence can **only be taken once**. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of **taking fresh cognizance of the offence and, thereafter, proceed to issue summons, is not in accordance with law**. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session". Xxx xxx

10. In the aforesaid backdrops, especially when cognizance has been taken twice in this case, the cognizance of offence taken by the Magistrate subsequently is not legally tenable and liable to be

set aside. It is, however, open to the Court to consider and frame charge against the accused persons after taking into consideration the materials placed on record and even charge can be altered or modified at any time before pronouncement of judgment. In this case, the learned NGN-cum-JMFC, Rajnagar, Kendrapara took cognizance of offence second time in the same case on a protest petition filed by the Informant, but the complaint was filed subsequent to framing of charge against the Petitioner Nos. 1 to 3 and had there been any materials justifying the commission of offences of which cognizance was not taken, the learned NGN-cum-JMFC, Rajnagar, Kendrapara would have resorted to Section 216 of Cr.P.C. for alteration of the charge, but he could not have taken cognizance of offence twice. Further, after framing of charge, there is no provision in the Code to add accused person till the stage of Section 319 of the Code, but the learned NGN-cum-JMFC, Rajnagar has added

petitioner Nos. 3 to 6 as an accused in the case after framing of charge which is not permissible in the eye of law inasmuch as petitioner Nos. 3 to 6 although named in the FIR, but not charge sheeted, and upon receipt of charge sheet and agreeing to it, the learned NGN-cum-JMFC, Rajnagar after applying his mind had taken cognizance of offences and issued processes only against petitioner Nos. 1 to 3. Hence, the impugned order passed on 16.05.2022 taking cognizance of offence subsequently being unsustainable in the eye of law is hereby set aside.

11. In the result, the CRLMC stands allowed on contest to the extent indicated above, but in the circumstance there is no order as to costs.

**(G. Satapathy)
Judge**

*Orissa High Court, Cuttack,
Dated the 11th of October, 2023/Priyajit*