

**AFR**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLMC No.4571 of 2023**

***Bhagirathi Das & another***

....

***Petitioners***

Mr. Debasis Panigrahi, Advocate

*-versus-*

***State of Odisha***

....

***Opp. Party***

Mr. Shashanka Patra, ASC

**CORAM:  
JUSTICE CHITTARANJAN DASH**

**ORDER  
02.11.2023**

**Order No.**

01. 1. Heard learned counsel for the Petitioners and the State.
2. By means of the present application, the Petitioner seeks indulgence of this Court praying to quash the proceeding in G.R. Case No.1520 of 1999 in Trial No.576 of 2009 pending in the court of the learned Nyayadhikari, Gramya Nyayalaya, Puri.
3. The background facts of the case are that, on 28.11.1999 at about 1.00 AM while the informant was returning to Puri in his Truck bearing Registration No. OR-X-6711, the present Petitioners along with their associates detained the Truck of the informant at Satyabadi and forcibly asked the informant to give lift to them upto Puri in his Truck. When the informant denied to that, the accused Petitioners abused him in filthy languages and also assaulted him by means of fist blows and forcibly travelled in that Truck. On the way near Bira-Narsinghpur the accused persons asked the informant to stop the Truck and when the informant did

not stop the vehicle, the accused persons assaulted the informant as well as the Helper of the vehicle and damaged the vehicle. On the basis of the F.I.R. lodged by the informant-injured, Chandanpur P.S. Case No.119 of 1999 was registered and investigation was commenced. After completion of the investigation, the police submitted charge-sheet on 30.11.1999 against the present Petitioners along with others for the offences under Sections 341/323/294/427/506/34, I.P.C.

4. While the matter stood to trial, the case was split up against the present Petitioners and the trial commenced against the co-accused persons namely Nabal Kishor Kedia, Narasingh Patra and Nandi Ranjay Mohapatra. The learned Nyayadhikari, Gramya Nyayalaya, Puri vide judgment dated 01.02.2018 acquitted the above-named co-accused persons from all the charges as alleged.

5. Learned counsel for the Petitioners, inter alia, submits that, during the trial in the aforesaid G.R. Case No.1520 of 1999, it is observed by the learned court in the said judgment that P.W.2, who is the informant in the case, admitted that he is not aware of the contents of the F.I.R., and basing upon that the said statement, the learned court below found the prosecution to have failed to prove its case.

6. Upon perusal of the impugned judgment dated 01.02.2018 it is found that the learned court below did not analyze / appreciate the evidence of the informant-injured in toto but in piece meal thereby seems to have reached a different conclusion. In his evidence the informant/injured has categorically stated in detail about the manner in which the incident occurred, the assault made to him and the injuries sustained, the damage caused to the vehicle. The medical officer has well proved the injury on the injured in consonance with the version of the injured that goes

unchallenged. Consequently, it is difficult to accept the submission made by the learned counsel for the Petitioners that by such observation of the learned court below a similar view would also be expected in favour of the Petitioners. *In Megha Singh v. State of Punjab 2004 SCC (Crl.) 58* the Apex Court held that the acquittal of the co-accused does not by itself entitle the other accused in the same case to acquittal as a single significant detail may alter the entire aspect. Further, in *Gorle Section Naidu v. State of A.P. AIR 2004 SC 1169* the Apex Court referring to Section 3 of the Evidence Act and credibility of evidence, held that mere **acquittal** of large number of **co-accused** does not per se entitle others to **acquittal**. The court has duty in suit cases to separate grain from chaff. The Apex court further held as follows:

“(vi) On the basis of materials placed before the High Court in proceedings under Section 482 of the Code of Criminal Procedure (which materials can be placed before the court in appropriate proceedings before the subordinate courts) such extraordinary inherent powers under Section 482 of the Code of Criminal Procedure cannot normally be invoked, unless such materials are of an unimpeachable nature which can be translated into legal evidence in the course of trial.

(vii) The judgment of **acquittal** of a **co-accused** in a criminal trial is not admissible under Sections 40 to 43 of the Evidence Act to bar the subsequent trial of the absconding **co-accused** and cannot hence be reckoned as a relevant document while considering the prayer to quash the proceedings under Section 482 Cr.P.C. Such judgments will be admissible only to show as to who were the parties in the earlier proceedings or the factum of **acquittal**.

(ix) The fact that the **co-accused** have secured **acquittal** in the trial against them in the absence of absconding **co-accused** cannot by itself be reckoned as a relevant circumstance while considering invocation of the powers under Section 482 of the Code of Criminal Procedure.

(x) A judgment not inter parties cannot justify the invocation of the doctrine of issue estoppel under the Indian law at present.

(xi) Conscious of the above general principles, the High Court has to consider in each case whether the powers under Section 482 of the Code of Criminal Procedure deserve to be invoked. Judicial wisdom, sagacity, sobriety and circumspection have to be pressed into service to identify that rare and exceptional case where invocation of the extraordinary inherent jurisdiction is warranted to bring about premature termination of proceedings subject of course to the general principles narrated above.”

7. Above being the position of law, considering the facts as discussed above, this Court finds no merit in the application of the Petitioners, which is accordingly rejected. Considering the age of the case, the Petitioners are directed to surrender before the court in seisin over the matter and move a motion for bail, in which event the court concerned shall pass appropriate order in admitting the Petitioners to bail, if any and further the trial in accordance with law.

8. The CRLMC stands disposed of accordingly.

**(Chittaranjan Dash)**  
**Judge**

*S.K. Parida*