

(2013) 01 OHC CK 0017
In the Orissa High Court
Case No : CRLMC No. 4397 of 2011

Nirupama Swain and three Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 161
Penal Code, 1860 (IPC) — Section 294, 323, 34, 341, 354

Citation : (2013) 115 CLT 1057 : (2013) 1 OLR 735

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : S.R. Mohapatra, B.R. Mohanty, B.K. Raj, S. Harichandan and M.K. Swain, for the Appellant; D.R. Parida for O.P. 2, for the Respondent

Final Decision : Allowed

Judgement

M.M. Das, J.—The petitioners are accused persons in G.R. Case No. 446 of 2009 arising out of Kendrapara P.S. Case No. 211 of 2009 pending before the learned S.D.J.M., Kendrapara. They have assailed the order dated 19.3.2010 by which the learned S.D.J.M., Kendrapara has taken cognizance of the offences under Sections 341/323/294/452/354/506/379/34 IPC against the accused persons who are on bail. It appears from the facts of the case that number of criminal cases are pending between the parties. The opposite party No. 2 filed a complaint case, being I.C.C. No. 217 of 2009, before the learned S.D.J.M., Kendrapara, who sent the same u/s 156(3) Cr.P.C. to the Kendrapara Police Station for investigation. The I.I.C., Kendrapara P.S. after receiving the complaint petition registered the same for the alleged commission of offence under Sections 341/323/294/452/354/506/379/34 IPC as Kendrapara P.S. Case No. 211 of 2009 corresponding to G.R. Case No. 446 of 2009. After investigation, charge-sheet has been submitted against the present petitioners for the alleged commission of the above offences. In between, the petitioners approaching this Court were directed to be released on bail by orders passed in BLAPL No. 9872 of 2009. It further appears that alleging commission of certain offences, the

petitioner No. 4 also lodged an FIR against the husband of the opposite party No. 2, which has been registered as Kendrapara P.S. Case No. 150 of 2008. Mr. Mohapatra, learned counsel for the petitioners vehemently urged that there is absolutely no prima facie case made out against the petitioners for the alleged commission of offences and the learned S.D.J.M., Kendrapara has not applied his judicial mind while passing the impugned order taking cognizance of the offences.

2. Mr. Parida, learned counsel appearing for opposite party No. 2, on the contrary, submitted that there was ample material before the learned S.D.J.M., Kendrapara basing on which he has passed the impugned order, which does not call for any interference by this Court.

3. On perusal of the statements of the witnesses recorded during investigation u/s 161 Cr.P.C., which have been produced before me, I find that there is absolutely no prima facie case made out against the petitioners with regard to commission of the alleged offences and the learned S.D.J.M., Kendrapara in the impugned order has not whispered a word as to why he came to the finding that a prima facie case has been made out against the petitioners with regard to commission of the alleged offences. It appears from the impugned order that the learned S.D.J.M., Kendrapara has in a mechanical manner, after receiving the charge-sheet, mentioned that there is a prima facie case made out against the accused persons, which clearly reveals that the learned S.D.J.M., Kendrapara has not applied his judicial mind before taking cognizance of the alleged offences. I, therefore, finding that there is absolutely no prima facie case made out against the petitioners with regard to commission of the alleged offences, quash the order dated 19.3.2010 passed in G.R. Case No. 446 of 2009 and as a consequence, the entire proceeding in G.R. Case No. 446 of 2009 pending before the learned S.D.J.M., Kendrapara stands quashed.

The CRLMC is accordingly allowed.