

(2025) 12 OHC CK 1868

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 2361 Of 2016

Ullash Ch. Samantray

APPELLANT

Vs

State Of Odisha And Another

RESPONDENT

Date of Decision : 08-12-2025

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 144(2), 155(2), 156(1), 482
Indian Penal Code, 1860 — Section 120B, 323, 384, 406, 420, 423, 467, 468

Citation : (2025) 12 OHC CK 1868

Hon'ble Judges : Chittaranjan Dash, J

Bench : Single Bench

Advocate : N. Lenka, S. Mohanty, Samir Kumar Mishra

Final Decision : Dismissed

Judgement

Chittaranjan Dash, J

1. By means of this application, the Petitioner seeks to quash the criminal proceeding in connection with ICC No.315 of 2016 pending before the learned S.D.J.M., Bhubaneswar initiated at the instance of the Opposite Party No.2.

2. The background facts of the case are that the mother of the Opposite Party No.2, namely Pramila Paikray, the sister of the present Petitioner filed a Civil Suit No.825 of 2006 in the court of learned Civil Judge, (Sr. Division), Bhubaneswar against the Petitioner praying for decree of partition of the suit properties allotting 1/4th share in her favour. In the said suit, the mother of the Opposite Party No.2 described the Petitioner as the son of the Raghunath Samantray and not Lokanath Samantaray. Finally, the aforesaid suit was decreed on the basis of the compromise filed by the Parties, wherein it was admitted that the Petitioner is the son of Lokanath Samantray and not Raghunath Samantray. Having satisfied with the decree passed by the learned court on the basis of the compromise, the mother of the Opposite Party No.2 namely Pramila Paikray got the properties fell in her share mutated in her name. Subsequently, she sold

away the said properties in faavour of one Gangadhar Sahoo of Baramunda, Bhubaneswar in thhe district of khurda. It is alleged by the Petitioner that while filing the suit, the said Pramila Paikaray intentionally described the Petittioner as son of Raghunath Saamantray instead of Lokanathi Samanntray but the Petitioner consistently asserted him to be the son of saaid Lokanath Samantray. After about 3 years of the said final decree, the said Pramila Paikray filed CMA No. 35/11 before the learned Civil Court U/s 151 CPC, inter alia, praying to set aside the compromise decree on the ground that the same has been obtained by committing fraudd. The petitioner contested the said prroceeding by submitting his objection. Despite the objection, the learned Trial Court accepted the case of the Petitioner for consideration whereupon the Petitioner preferred Criminal Reviission Petition before this Honhle Court in CRP No.3/12. This Court by order dated 03.02.2012 stayed the further proceeding in the aforesaid CMA No. 35/2011. When the matter stood thus, in the year 2015, the said Pramila Paikray filed another CMC No.636 of 2015 under Section 144 (2) Cr.P.C against the Petitioner and some others, inter, alia, seeking for order under the said provision of law not to raise any construction over the scheduled-A land of the said Petition. When an interimm order was passed in the said proceeding, the Petitioner challenged the aforesaid order in CRLREVV No.457 of 2015 before this Court. During pendency of the aforessaid Criminal Revision, the Adddl. DCP-cum-Executive Magistrate, Bhubaneswar vide order dateed 28.07.2015 was pleased to droop the said proceeding, interr alia, mentioning therein that the disppute are civil in nature. It is furrther alleged by the Petitioner that in thhe meantime, Pramila Paikray filed so many cases before the learneed civil court including the saidd CMA No.35 of 2011 but the CMA No.35 of 2011 got stayed by this Court. In the meanwhile, on thee basis of a complaint case filed by the son of Pramila Paikray, inter alia allegeing that the Petitioner is the son of Late Raghunatth Samantray but claimed to be the adopted son of Lokanath Samanntray and has sold certain propperties and further that the Petitioner managed to obtain a compromise decree in the civil suit against his mother namely Pramila Paikray. His mother Pramila Paikray, being an old lady did not know the implication of putting signature on court paper and her siggnature in the alleged compromise deccree and now she has been suuffering and claiming himself to be the son of Lokonath Samnaatray, the Petitioner sold some properties in the name of Hrusikeh Samantray, S/o. Raghunath Samantray. It is further alleged that the Petitioner sold certain propeerties to one Swarnalata Mohaanty as Ullash Samantray, S/o. Lokantth Samantray and subsequently cancelled the same through a deed of cancellation. In the above ciircumstances, the Petitioner has approached this Court seeking to challenge the initiation of the criminaal proceeding instituted at the behest of the son of Pramila Paikray annd has prayed for quashing of thhe same.

3. Mr. Lenkka, learned counsel for the Petitioner, submitted that the entire set of allegations in the complaint arises ouut of a long-standing propertyy dispute between the parties, which iss purely civil in character, and that the criminal

court ought not to entertain matters that essentially pertain to civil rights over immovable property. He contended that right from the institution of the civil suit, Opposite Party No.2, namely Pramila Paikray, the elder sister of the Petitioner, with the sole objective of appropriating the entire properties of Lokanath Samantray, deliberately disputed the parentage of the Petitioner by describing him as the son of Raghunath Sammantray. Ultimately, however, the matter was amicably settled and a compromise decree was passed wherein it stood acknowledged that the Petitioner is the son of Lokanath Samantray. Only after alienating the properties that had fallen to her share pursuant to the compromise decree, Pramila Paikray instituted proceedings challenging the said compromise decree, despite the fact that it had already been fully acted upon. Learned counsel further argued that the complaint case discloses no cause of action whatsoever and that the issues raised therein have already been settled between the parties. The land in question, according to him, does not fall within the common hotchpotch nor was it the subject matter of the compromise decree. Therefore, even assuming for the sake of argument that the Petitioner has executed certain documents describing himself as the son of Lokanath Samantray, no criminal liability can be attached to him, as no right in the property of Opposite Party No.2 or her son stands affected thereby. It is his specific submission of Mr. Lenka that the core of the dispute revolves around whether the Petitioner is the son of Lokanath Samantray or Raghunath Samantray, which is a matter already settled in multiple unimpeachable records. He drew attention to the Record-of-Rights of the year 1962 pertaining to Plot No. 37-E, wherein the Petitioner has been recorded as the son of Lokanath Samantray. Likewise, the matriculation certificate issued by the Board of Secondary Education, an unimpeachable document, also reflects the Petitioner's parentage as the son of Lokanath Samantray. The same description appears consistently in the Aadhar Card and other official documents issued thereafter. Further, in a gift deed executed in the year 1976, Raghunath Samantray himself described the Petitioner, Ullash Ch. Samantray, as his nephew, thereby acknowledging that the Petitioner was not his son. Relying on these materials, Mr. Lenka contended that there is no manner of doubt that the Petitioner is the son of Late Lokanath Samantray. He therefore submitted that the present criminal proceeding, initiated at the instance of the Petitioner's nephew, is nothing but an attempt to usurp property and to subject the Petitioner to unwarranted harassment, and is liable to be quashed.

4. Mr. Sammir Kumar Mishra, learned Senior Advocate appearing for Opposite Party No.2, vehemently contested the submissions advanced by Mr. Lenka, learned counsel for the Petitioner. He submitted that the property in question, which has been alienated by the Petitioner by impersonating himself as the son of Lokanath Sammantray, squarely attracts the offences alleged in the complaint. According to him, the averments in the complaint, taken at their face value, clearly disclose the ingredients of the offences alleged and make out a prima facie case against the Petitioner. In such circumstances, it was contended that

the request of the Petitioner for quashing the complaint is wholly untenable and does not merit consideration.

5. Having heard the learned counsel for the respective parties and upon perusal of the documents, it is established that the mother of Opposite Party No.2 had filed Civil Suit No.825 of 2006, naming the Petitioner as a defendant. In the said suit, the mother of the plaintiff claimed a partition of the property under the common hotchpotch to the extent of one-fourth share, which ultimately ended in a compromise, and a compromise decree was passed under the joint signatures of all the parties in the suit, including the Petitioners Purnna Chandra Samantray, Swarnalata Badajena, Jharana Baliarsingh, Urmila Mohanty, and Pramila Paikray. The verification attached to the joint petition specifies the details of the property involved in the common hotchpotch, from which the mother of the plaintiff claimed her share.

Considering the submission of the learned counsel for the Petitioner that the property allegedly sold by the Petitioner forms part of his share in the common hotchpotch, both parties were asked to submit affidavits regarding the properties. The Petitioner submitted an affidavit providing details of the properties forming part of the common hotchpotch and covered by the compromise decree. The Opposite Party, however, filed an affidavit without giving specific details of the land in the common hotchpotch and reiterated their earlier contentions.

6. The joint petition, upon which the compromise decree was based, was accepted by the competent court in 2009, granting the mother of Opposite Party No.2 her one-fourth share in the property of the common hotchpotch. After the decree, the property was mutated in her favor and has since been alienated by her. It is also not disputed that the mother of Opposite Party No.2 filed a civil application challenging the compromise decree on the ground of fraud, which is still pending before the competent court. The allegations in that civil application form the basis of the complaint case filed by the nephew of the Petitioner, registered as 1CC Case No.315 of 2016.

The Petitioner's contention that Raghunath Samantray, in his deed of gift in 1976, described the Petitioner as his nephew has not been disputed by Opposite Party No.2. Further, the acknowledgment by the mother of Opposite Party No.2 that the Petitioner is the son of Lokanath Samantray, along with documents reflecting the same, prima facie shows no material that incriminates the Petitioner or establishes any criminal conduct on his part.

7. In the matter of Usha Chakraborty & another vs. State of West Bengal and another reported in (2023) 15 SCC 135, the Hon'ble Supreme Court held as follows:-

"8. In Paaramjeet Batra v. State of Uttarakhand, this Court held: (SCC p. 676, para 12)

"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of the facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."

xxx

10. In *Kapil Aggarwal v. Sanjay Sharma*, this Court held that Section 482 is designed to achieve the purpose of ensuring that criminal proceedings are not permitted to generate into weapons of harassment.

11. In the decision in *State of Haryana v. Bhajan Lal*, a two-Judge Bench of this Court considered the statutory provisions as also the earlier decisions and held as under: (SCC pp. 378-79, para 102)

"102.... (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 Act concerned (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.

xxx

20. As noticed hereinbefore, the respondent alleged commission of offences under Sections 323, 3884, 406, 423, 4677, 468, 420 and 120-B IPC against the appellants. A bare perusal of the said allegation and the ingredients to attract them, as adverted to hereinbefore would reveal that the allegations are vague and they did not carry the essential ingredients to constitute the alleged offences. There is absolutely no allegation in the complaint that the appellants herein had caused hurt on the respondent so also, they did not reveal a case that the appellants had intentionally put the respondent in fear of injury either to himself or another or by putting him under such fear or injury, dishonestly induced him to deliver any property or valuable security. The same is the position with respect to the alleged offences punishable under Sections 406, 423, 467, 4688, 420 and 120-B IPC. The ingredients to attract the alleged offence referred to hereinbefore and the nature of the allegations contained in the application filed by the respondent would undoubtedly make it clear that the respondent had failed to make specific allegation against the appellants herein in respect of the aforesaid offences.

21. The factual position thus would reveal that the genesis as also the purpose of criminal proceedings are nothing but the aforesaid incident and further that the dispute involved is essentially of civil nature. The appellants and the respondents have given a cloak of criminal offence in the issue. In such circumstance when the respondent had already resorted to the available civil remedy and it is pending, going by the decision in *Paramjeet Batra*, the High Court would have quashed the criminal proceedings to prevent the abuse of the process of the Court but for the concealment.

22. In the aforesaid circumstances, coupled with the fact that in respect of the issue involved, which is of civil nature, the respondent had already approached the jurisdictional civil court by instituting a civil suit and it is pending, there can be no doubt with respect to the fact that the attempt on the part of the respondent is to use the criminal proceedings as weapon of harassment against the appellants. The indisputable facts that the respondent has filed the pending title suit in the year 2015, he got no case that he obtained an interim relief against his removal from the office of Secretary of the School Managing Committee as also the trusteeship, that he filed the stated application for an order for investigation only in April 2017 together with absence of a case that despite such removal he got a right to get informed of the affairs of the school

and also the trust, would only support the said conclusion.

23. For all these reasons, we are of the considered view that this case invites invocation of the power under Section 482 CrPC to quash the FIR registered based on the direction of the Magistrate Court in the aforesaid application and all further proceeding in pursuance thereof. Also, we have no hesitation to hold that permitting continuance of the criminal proceedings against the appellants in the aforesaid circumstances would result in abuse of the process of court and also in miscarriage of justice."

8. Having considered the submissions of the learned counsel for the respective parties and upon perusal of the records, it is evident that the dispute between the parties is primarily civil in nature, relating to ownership and partition of the properties under the common hotchpotch. The allegations in the complaint arise out of the same civil dispute, and there is no material on record to prima facie suggest that the Petitioner has committed any criminal offence.

9. It is further clear from the documents filed and the compromise decree passed in Civil Suit No. 825 of 2006 that the Petitioner's parentage as the son of Lokanath Samantray has been consistently acknowledged, including in official records such as the Record-of-Rights, educational certificates, and other documents. The initiation of the present criminal proceeding appears to be motivated solely for harassment and to create unnecessary litigation, without any genuine criminal cause of action.

10. In view of the above, and the principle laid down by the Hon'ble Supreme Court, this Court is of the view that the present complaint constitutes an abuse of the process of law. Accordingly,