



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 4267 of 2023

**AFR**

*Sukanta Kumar Mohanty & ....  
others*

*Petitioners*

Mr. A.K. Mishra, Advocate

-versus-

*State of Odisha & Anr. ....*

*Opposite Parties*

Ms. S. Mohanty, Addl. P.P

Mr. A.P. Bose, Advocate  
For O.P. No.2

**CORAM:**

**THE HON'BLE MR. JUSTICE CHITTARANJAN DASH**

**Date of Judgment: 17.10.2025**

**Chittaranjan Dash, J.**

1. Heard learned counsels for both the parties.
2. By means of this application the Petitioners seek to quash the order of cognizance dated 14.02.2023 passed by the learned J.M.F.C., Chhendipada in G.R. Case No.378 of 2021. The learned J.M.F.C., Chhendipada vide the aforesaid order has been pleased to take cognizance of the offences under Sections 417/420/409/506/34 of the IPC implicating the Petitioners on the basis of a complaint made to that effect by one Bansidhar Pradhan, the Opposite Party No.2 herein.
3. The background facts of the case are that Bansidhar Pradhan, the Opposite Party No.2 lodged a report with the IIC, Chhendipada P.S. on 16.04.2021 alleging some irregularities in the functioning of the institution and misappropriation of the fund of



the trust i.e. Kalinga Institute of Mining Engineering and Technology (KIMET), a diploma institute. The said report was treated as FIR and Chhendipada P.S. Case No.215 of 2021 was registered and the investigation commenced. In course of the investigation, the investigating agency found no supporting evidence in respect to the allegations and submitted the closure report (F.R) holding the allegations to be a mistake of fact vide Chhendipada P.S. F.F. No. 548 dated 30.11.2011 and notice was served on the Complainant along with the copy of the report. Pursuant to the closure of the investigation and the submission of the final report, the Opposite Party No.2 submitted a Protest Petition before the learned J.M.F.C., Chhendipada whereupon, the learned court upon recording the initial statement of the Complainant and that of the witnesses under Section 202 Cr.P.C. found sufficient material and strong ground and took cognizance.

4. Mr. Mishra, learned counsel for the Petitioners, while assailing the impugned order, submitted inter alia that the cognizance taken by the learned Court in the G.R. case itself is procedurally irregular and could not have been proceeded with against the Petitioners, particularly when the said G.R. case had culminated in a final report. Mr. Mishra, learned counsel for the Petitioners, further submitted that the Protest Petition filed by the Opposite Party No.2 in response to the notice issued by the police under Section 173 Cr.P.C. ought to have been treated as a complaint case, and that taking cognizance in the G.R. case itself is unknown to law. Accordingly, he sought quashing of the same.



5. The learned counsel for the Opposite Party No.2, along with the learned counsel for the State, while not disputing the legal position regarding the manner in which the learned Court treated the Protest Petition, submitted that the same amounts only to a curable irregularity. It was further submitted that the impugned order taking cognizance of the offence does not suffer from any infirmity and, therefore, the contention of the learned counsel for the Petitioners seeking quashing of the impugned order is misconceived and cannot be sustained.

6. “Complaint” is defined under Section 2(d) of the Code of Criminal Procedure, 1973. The expression “Protest Petition” does not find place in the Code, yet it is a legally recognised and accepted practice enabling the complainant or victim to oppose a closure/final report submitted by the police under Section 173(2) Cr.P.C. The Hon’ble Supreme Court in the matter of ***Gangadhar Janardan Mharte vs. State of Maharashtra and Ors.*** reported in ***(2004) 7 SCC 768***, discussed the absence of any specific provision in the Code relating to the filing of a Protest Petition. Reference was made to the decision in the matter of ***Bhagwant Singh vs. Commissioner of Police and Anr.*** reported in ***1983 (3) SCC 344***, wherein the Hon’ble Court stressed on the desirability of issuing intimation to the informant when a report under Section 173(2) Cr.P.C. is under consideration. It was further held that where the Magistrate decides not to take cognizance and intends to drop the proceedings against the persons named in the FIR, issuance of notice to the informant and grant of an opportunity of hearing becomes mandatory. In the matter of ***Gangadhar Janardhan*** (Supra), the Hon’ble Supreme Court also dealt with the options



available to a Magistrate when a report under Section 173(2)(i) is submitted. In a situation where the report concludes that no offence appears to have been committed, the Magistrate may: (i) accept the report and drop the proceedings; or (ii) disagree with the report, take the view that there is sufficient ground to proceed further, take cognizance of the offence and issue process; or (iii) direct further investigation by the police under Section 156(3) Cr.P.C.

Accordingly, in a situation where a Protest Petition is filed against a closure report stating that no case is made out against the accused and that no offence has been committed, the question whether such Protest Petition can be treated as a complaint petition by the Magistrate has also been set at rest.

7. In this regard, the Hon'ble Supreme Court in *Popular Muthiah vs. State Represented by Inspector of Police*, reported in (2006) 7 SCC 296 held that when the final form is filed, the Magistrate has jurisdiction, in the event, a fresh Petition is filed, to treat the same as a complaint and if prima facie case is made out, to issue process. In the matter of *Vishnu Kumar Tiwari vs. State of Uttar Pradesh* reported in (2019) 8 SCC 27, the Hon'ble Supreme Court held that if a Protest Petition satisfies the requirements of a complaint, the Magistrate may treat it as a complaint and proceed with the same as required under Section 200 read with Section 202 of the Code.

While dealing with the maintainability of a second Protest Petition, the Hon'ble Supreme Court in *Shiv Shankar Singh vs. State of Bihar*, reported in (2012) 1 SCC 130, has held that a Protest Petition can always be treated as a complaint and proceeded



with under Chapter XV Cr.P.C. Accordingly, where there is a bar on entertaining a second complaint on the same facts, a second Protest Petition may also be entertained only under exceptional circumstances. It has further been held that even where the Magistrate has already accepted the closure report/final report of the police, the law on the point has also been set at rest by the Hon'ble Supreme Court in the matter of ***Kishore Kumar Gyanchandani vs. G.D. Mehrotra and Anr.*** reported in ***AIR 2002 SC 483***, wherein it is held that the acceptance of the final report does not debar the Magistrate from taking cognizance on the basis of materials produced in a complaint proceeding, nor does it take away the complainant's right to file a regular complaint. The Hon'ble Supreme Court once again, relying on the said decision in the matter of ***Kishore Kumar Gyanchandani*** (Supra) while dealing a similar case in the matter of ***Rakesh and Anr. vs. State of U.P.*** reported in ***AIR 2014 STPL (Web) 524 SC***, held that the Magistrate does not become functus officio in accepting the final report and is not denuded of all power to proceed in the matter.

A similar view has also been taken by the Hon'ble Supreme Court in the matter of ***Mahesh Chand vs. B. Janardhan Reddy & Anr.***, reported in ***(2003) 1 SCC 734***, wherein it is held that there can be any doubt or dispute that only because the Magistrate has accepted the F.R., the same by itself would not stand in his way to take cognizance of the offence on a Protest/Complaint Petition.

As far as the availability of the discretionary power with the Magistrate once the Protest Petition is filed, the Hon'ble Supreme Court held in the matter of ***Vishnu Kumar Tiwari*** (Supra) that if the



Magistrate is convinced on the basis of the consideration of the F.R. the statement under Section 161 Cr.P.C. that no prima facie case is made out, the Magistrate could not be compelled to take cognizance by treating the Protest Petition as a complaint. Further, it is held that if the Magistrate treats the Protest Petition as a complaint, then the procedure prescribed under Section 200 and 202 Cr.P.C. has to be followed and necessarily Complainant and witnesses have to be examined. But, as the Magistrate could not be compelled to treat the Protest Petition as a complaint, the remedy of the Complainant would be to file fresh complaint and invite the Magistrate to follow the procedure under Section 200 read with Section 202 Cr.P.C. Thus, pointing out an effective alternative remedy available to the aggrieved party instead of praying for treating the Protest Petition as complaint.

8. From the discussion made hereinabove, it can very well be concluded that a Protest Petition can be treated as a complaint petition if it fulfills the requirements of a complaint. It is also settled that even after acceptance of the closure report or final report, the Magistrate can take cognizance of the Protest Petition. However, though he has ample discretionary power, he cannot be compelled to take cognizance by treating the same as a complaint. In any case, the remedy of the complainant is to file a fresh complaint and invite the Magistrate to follow the procedure under Sections 200 and 202 Cr.P.C., instead of praying for cognizance by treating the Protest Petition as a complaint petition and examining witnesses. The deviation in the present case is that the learned Magistrate, while accepting the Protest Petition filed by Opposite Party No. 2 under Section 173 Cr.P.C., instead of treating the same



as a complaint petition, took cognizance of the offences in the G.R. case itself, which amounts to a procedural irregularity. It is trite law that substantial justice cannot be sacrificed at the altar of technicalities. In the instant case, admittedly, upon the closure report submitted by the police, the victim/complainant rightly submitted a Protest Petition. The acceptance or non-acceptance of the Protest Petition in a particular format required under law, as discussed above, is the responsibility of the Court, and the victim/complainant has nothing to do with the same. Consequently, any irregularity in the procedure cannot ipso facto affect the substance of the case. Therefore, the action of the learned Magistrate in adhering to the procedure under Sections 200 read with 202 Cr.P.C. while taking cognizance of the offences against the petitioners in the G.R. case has to be discontinued, and the Protest Petition shall be treated as a complaint. The registration thereof be accordingly effected, and the entire exercise undertaken in the G.R. case in taking cognizance of the offences be made over to the said complaint case.

9. As far as the claim of the Petitioners herein assailing the impugned order praying for the discharge of the Petitioners under Section 239 Cr.P.C. is concerned, the law is well settled that the court while considering an application for discharge, need not have to dwell into the pros and cons of the matter by examining the defence of the accused. The Court is required merely to examine the material placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused thereupon. Keeping in view the aforesaid principle, when the Protest Petition filed by the Opposite Party No.2 is examined, the



allegations made therein is sufficient to indict the conduct of the Petitioners in explaining their innocence during trial.

10. Therefore, the impugned order taking cognizance dated 14.02.2023 passed by the learned J.M.F.C., Chhendipada in G.R. Case No.378 of 2021, also does not suffer from any infirmity on merit, save and except as observed hereinabove. The CRLMC is accordingly disposed of.

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

*Bijay*