

groups and individuals, thereby tarnishing the social prestige of the informant. On the basis of the report, Kumbharpada P.S. Case No.27 of 2019 was registered, and investigation was taken up.

4. During investigation, incriminating materials were seized, including documents relating to the alleged social media posts. After completion of investigation, charge sheet was filed against the Petitioner under Sections 465, 469, 500 IPC and Section 66(C) of the I.T. Act, on the basis of which cognizance was taken by the learned S.D.J.M., Puri.

5. Mr. Mohanty, learned counsel for the the Petitioner, submits that the entire proceeding is vitiated for want of jurisdiction. He contended that the offences alleged against the Petitioner pertain to cyber-crime, crime, namely creation of forged electronic records, misuse of Facebook ID, and uploading of morphed and defamatory images, which are offences exclusively governed by the provisions of the Information Technology Act, 2000. He urged that in view of the Home Department Notification No.36478-HOME-DA1 No.36478 DA1-CRTN2- 0166/2017 dated 22.09.2017, published in the Odisha Gazette, the Cyber Crime P.S. at CID, Crime Branch, Odisha has been vested with exclusive jurisdiction to investigate offences under the I.T. Act throughout the State. Thus, the local police station, like Kumbharpada P.S., had no authority to register register or investigate the case. It is further submitted that continuation of the proceeding on the basis of an investigation carried out by an incompetent and unauthorised ed agency is an abuse of the process of Court. He placed his reliance eliance on the ratio of Sharat harat Babu Digumarti Vs. Govt. of 18, wherein the Hon'ble Supreme NCT of Delhi,, (2017) 2 SCC 18, Court held that once an offence falls within the scope of the special statute, the provisions of the general law cannot be simultaneously invoked. Mr. Mohanty accordingly a rdingly argued that the cognizance taken on the basis of such an investigation is without jurisdiction and the chargesheet submitted by the Kumbharpada P.S. is unsustainable in law, law and hence the entire criminal proceeding is liable to be quashed.

quashed

6. Mr. S. K. K Mishra, learned Senior Advocate,, appearing for O.P. No.2-Complainant, Complainant, argues on the basis of the RTI information received from the CID, CB, Odisha, that the plea of the Petitioner regarding lack of jurisdiction is misconceived. He points out that while the he 2004 Notification had declared the CID, CB Cyber Crime P.S. at Cuttack to have jurisdiction throughout the State, subsequent notifications, including the Government of Odisha Home Department Notification dated 18.12.2021, have created multiple Cyber Crime me & Economic Offences Police Stations at the district level, including one at Puri itself, with territorial jurisdiction over the district. More importantly, the RTI reply clarifies that apart from the designated Cyber Crime Police Stations, any other police pol station in the State is competent to register and investigate cases under the I.T. Act, provided the investigation is conducted by an officer not below the rank of Inspector. Since in the present case, case the investigation was carried out by the Inspector-in Inspector in-Charge of Kumbharpada P.S., P.S., the requirement under Section 78 of the I.T. Act is satisfied. It is further contended that the RTI reply specifically affirms that there is "no harm" in prosecution or investigation investigation of the present case by Kumbharpada P.S., as the same was investigated by an Inspector. Therefore, the allegation of lack of jurisdiction is unfounded, and the investigation and charge sheet cannot be faulted on that score.

7. Ms. S. Mohanty, learned Additional Public Prosecutor, Prosecutor placed the affidavit submitted by the Deputy Superintendent of Police-In-Charge Charge,, wherein it is contended that the investigation was carried out strictly in accordance with law. It is pointed out that after registration of Kumbharpada Kumbharpada P.S. Case No.27 of 2019, investigation was conducted by the then Inspector-in-Charge, Inspector Charge, who being of the rank of Inspector, was fully competent under Section 78 of the I.T. Act, 2000 to investigate the matter. Ms. Mohanty submits that the he affidavit clarifies that there is no bar in the I.T. Act or in the relevant notifications upon the general police to register and investigate cases under the said Act, so long as the officer is not below the rank of Inspector. After collection of documentatary document as well ll as electronic evidence, a prima facie case was well established against the Petitioner for the offences under Sections 465, 469, 500 IPC read with Section 66(C) of the I.T. Act, and accordingly Charge Sheet No.185 dated 31.07.2020 was submitted. It is further f highlighted in the affidavit that the Petitioner is a habitual offender, having antecedents in multiple criminal cases registered earlier at Kumbharpada P.S., P.S., and therefore the plea that the present proceeding is vitiated by lack of jurisdiction is wholly untenable. On these grounds, it was urged that the CRLMC application deserves to be dismissed.

8. Having heard learned counsel for the parties and perused the materials on record, this Court finds it necessary to first address the jurisdictional objection objection raised by the Petitioner, inasmuch as the maintainability of the present prosecution hinges upon whether the investigation conducted by Kumbharpada P.S. suffers from inherent lack of jurisdiction. For such purpose, it is essential to carefully dissect the statutory foundation under the Information Technology Act, 2000, the series of Government Notifications issued in the State of Odisha, and the clarifications subsequently furnished by the competent authorities.

9. At the outset, the statutory scheme itself provides the foundational answer. For better appreciation, Sections 78 and 80 of the Information Technology Act, 2000 is produced as below -

"78.

78. Power to investigate offences offences. -

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a police officer not below the rank of Inspector shall investigate any offence under this Act.

80. Power of police officer and other officers to enter, search, etc.-

etc (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any police officer, not below the rank of a Inspector, or any other officer of the Central Government or a State Government authorised by the Central Government in this behalf may enter any public public place and search and arrest without warrant any person found therein who is reasonably suspected of having committed or of committing or of being about to commit any offence under this Act.

Explanation -For the purposes of this sub-section, Explanation. section, the expression expression
□public place includes any public conveyance, any hotel, any shop or any other place intended for use by, or accessible to the public. (2) Where any person is arrested under sub-section sub section (1) by an officer other than a police officer, such officer shall, shall, without unnecessary delay, take or send the person arrested before a magistrate having jurisdiction in the case or before the officer-in-

officer -charge of a police station.

(3) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, subject to the provisions of this section, apply, so far as may be, in relation to any entry, search or arrest, made under this section."

section."

10. The provision mandates that no police officer below the rank of Inspector shall investigate any offence under this Act.

Act This provision vision creates a rank-based rank based safeguard, ensuring that offences under the I.T. Act, which often involve technical appreciation of electronic records, are investigated only by experienced officers. Section 80 further confers power upon an officer not below the th rank of Inspector to enter, search, and arrest without warrant in respect of offences under the Act. These provisions, when read together, clearly indicate that the I.T. Act does not divest general police stations of competence to investigate; rather, it conditions such competence by prescribing the minimum rank of the Investigating Officer. Therefore, the jurisdictional bar is not territorial in nature but functional, rooted in the rank of the officer investigating the case.

11. Turning to the Government Notifications, Notifications, the State Government vide Notification dated 06.07.2004 had declared the Cyber Crime P.S. at CID, CB, Cuttack to be a Police Station with jurisdiction over the whole State of Odisha. This was further supplemented by the Home Department Notification Notification No.36478- No.36478 HOME-DA1-CRTN2 CRTN2-0166/2017 0166/2017 dated 22.09.2017, which is heavily relied upon by the Petitioner. The final paragraph of the said notification, however, deserves to be reproduced for clarity. It reads as:

"The existing Cyber Crime Police Station at CID, Crime Branch, Odisha, Cuttack which has earlier been notified to have the jurisdiction all over the State will now have exclusive jurisdiction over rest of the Police Districts along with concurrent jurisdiction all over the State and all the Cyber Crime Crime Police Stations shall function operationally and administratively under State CID, Crime Branch."

12. Much emphasis has been placed by the Petitioner upon the words "exclusive jurisdiction," but this Court is of the considered view that the same cannot be read in isolation. The very same sentence preserves the expression "along with concurrent jurisdiction all over the State."

13. The import of the th above referred phrase is clear that while the Cyber Crime Police Station at CID, CB, Cuttack is vested with exclusive sive jurisdiction over such Police Districts where no other specialised Cyber P.S. has been established, it simultaneously retains concurrent jurisdiction with other police stations all over the State. This concurrent jurisdiction acts as a statutory safety-valve safet and ensures that the general mandate of Section 78 of the I.T. Act is not rendered null and void. If the interpretation urged by the Petitioner is accepted that only CID Cyber Crime P.S. could investigate all cyber offences, it would render the words wor "along with concurrent jurisdiction all over the State"

State" redundant and would create a monopoly that would be impractical, rendering it inconsistent with the spirit of law. Hence, the 2017 Notification does not exclude jurisdiction of general police stations stations manned by Inspectors, rather, it reinforces the supervisory role of CID Cyber P.S. while recognising concurrent competence of other stations.

14. The position becomes further clarified in light of the Home Department Notification No. HOME-DA1-CRTN CRTN1-0005- 2021/44843/D&A /44843/D&A dated 18.12.2021, whereby multiple Cyber Crime and Economic Offences Police Stations were created at the district level. By this Notification, the State recognised the increasing volume of cyber offences and vested vest local cyber police stations with territorial jurisdiction while still preserving the overarching supervisory role of CID, CB. More importantly, subsequent clarification furnished by the Inspector-in-Charge, Inspector Charge, CID, CB Cyber Crime Police Station, pursuant to an RTI query, explicitly affirms rms the interpretation discussed hereinabove. It has been clarified by the IIC, CID, CB Cyber P.S. to the D.S.P. (Law Section), CID, CB, Cuttack that:

"As per the Information Technology Act 2000 Section 78 empowered that not below the rank of Inspector can investigate IT Act offences in his/her jurisdiction. It empowers the Police Station having Inspector in Charge on or above the rank of Inspector can investigate IT Act cases.

As per IT Act 2000 if Kumbharpada Police Station case No.27 dtd. 23.02.2019 u/s 465/469/500 IPC r/w Section 66-C 66 C IT Act is investigated by not below the rank of an Inspector of Police, there is no harm in prosecution or investigation of the said case."

15. This clarification by the designated Cyber P.S. itself underscores that jurisdiction jurisdiction under the I.T. Act is not territorially exclusive to the CID, CB Cyber Crime P.S., but extends concurrently to local police stations, subject only to the rank qualification under Section 78.

16. In the present case, the record discloses that the investigationonn was conducted by the then Inspector-in Inspector in-Charge of Kumbharpada P.S., who was statutorily competent under Section

78. Therefore, the foundational requirement under the I.T. Act stands satisfied. Accordingly, the jurisdictional challenge raised by the Petitioner oner cannot be sustained. The statutory scheme, the Government Notifications of 2004, 2017 and 2021, and the clarifications from CID, CB Cyber P.S., all point towards a harmonious interpretation that while CID Cyber P.S. retains concurrent jurisdiction across across the State, local police stations headed by Inspectors are not divested of competence to investigate cyber offences. The expression "exclusive jurisdiction" in the 2017 Notification cannot be read so as to obliterate the concurrent jurisdiction expressly expressly preserved in the same sentence, nor can it override the clear mandate of Section 78 of the I.T. Act. On the contrary, the notifications and clarifications demonstrate that the investigation by Kumbharpada P.S. was lawful and within jurisdiction.

17. To summarise, this this Court, therefore, comes to the considered conclusion that the objection regarding lack of jurisdiction on the part of Kumbharpada P.S. is untenable. The investigation having been carried out by an Inspector of Police, the statutory requirement requirem under Section 78 of the I.T. Act, 2000 stands satisfied. The Notifications of 2004 and 2017, when read in entirety, particularly the expression "concurrent jurisdiction all over the State," as well as the subsequent 2021 Notification and the clarification ion issued by the CID, CB Cyber Crime P.S., P.S. all make it abundantly clear that local police stations are not deprived of competence to investigate cyber offences. The plea of exclusive jurisdiction of CID Cyber Crime P.S. to the exclusion of all other policee stations is, therefore, without merit.

18. At this juncture, it is necessary to emphasise emphasi e that all the other grounds raised by the Petitioner touching upon alleged defects in collection of electronic evidence, alleged misidentification of Facebook accounts, or questions regarding the admissibility of materials, are matters which are essentially defences available to the accused at the stage of trial. Such disputed questions of fact cannot be adjudicated in proceedings under Section 482 Cr.P.C., which are intended nded to be exercised sparingly and only where the proceedings are manifestly without jurisdiction or unsustainable in law.

19. It is made clear that this Court has not expressed any view on the merits onn the allegations or on the evidentiary value of the materials ials collected. Those issues remain open to be urged before the trial court, which shall consider them in accordance with law.

law

20. In view of the above, above, the grounds propounded by the Petitioner do not warrant interference under Section 482 Cr.P.C. The CRLMC application stands dismissed, dismissed, accordingly.

accordingly Interim order, if any, stands vacated.

(Chittaranjan Dash) Judge Bijay Location: HIGH COURT OF ORISSA