

(1994) 09 OHC CK 0056

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 1516 of 1991

Abhi alias Abhimanyu Rana and Others

APPELLANT

Vs

Arjuna Charan Sutar

RESPONDENT

Date of Decision : 21-09-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 210(1)

Citation : (1995) 1 OLR 221

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : S.C. Sahoo, S.K. Sahoo and S.K. Nayak, for the Appellant; D. Nayak, S. Swain, D.P. Pradhan, D.P. Patnaik and M. Mohanty, for the Respondent

Judgement

A. Pasayat, J.—Main challenge of petitioners in this application is that statutory requirements of Section 210(1) of Code of Criminal Procedure, 1973 (in short "Code") were not complied with.

2. Case of the petitioners in short is as follows:

A complaint petition was filed by Arjuna Charan Sutar present opp. party No. 1 before learned Subdivisional Judicial Magistrate, Anandpur (in short "SDJM") and the same was registered at ICC No. 127 of 1990. By order dated 27-7-1991 cognizance was taken of offence punishable under Section. 395 of Indian Penal Code. 1860 (in short, "IPC"). Learned Magistrate directed issue of N.B.Ws, against present petitioners. In the complaint petition, it was mentioned that information was lodged at Ghasipura Police Station on 5-7-1990 and matter was under investigation. But as no effective steps were taken against accused persons (present petitioners), Arjun (Opp. party No. 1) filed the complaint.

3. Mr. S. K. Sahoo, learned counsel for petitioners has urged with reference to Section. 210 of Code that when in a case instituted other-wise than on a police report, (hereinafter referred to as "complaint case") it is made to appear to the Magistrate, during the course of enquiry or trial held by him, that an

investigation by Police is in progress in relation to the offence which is subject-matter of enquiry or trial held him, the Magistrate shall stay the proceedings of such enquiry or trial and call for a report on the matter from the police officer conducting the investigation. With reference to the complaint petition filed in the case it is submitted that complainant has himself stated about lodging of Information with police, and consequential investigation as undertaken. In statement recorded by learned Magistrate, same was also reiterated. Therefore, mandatory requirements to stay the proceeding and call for a report have not been complied with. Mr. D. Nayak, learned counsel for opposite party submitted that no case was registered and no investigation was undertaken, so as to attract application of Section 210 of the Code.

4. Section 210 of the Code is intended to secure that private complainants do not interfere with the course of justice. Section 210 had no corresponding provision in the Code of Criminal Procedure, 1973 (hereinafter referred to as "old Code"). The provision was introduced on the basis of recommendations by the Joint Select Committee which observed that when a serious case is under police investigation, some of the persons concerned sometimes file a complaint and quickly get an order of acquittal either by collusion or otherwise. In that eventuality investigation of the case by police becomes infructuous and leads to miscarriage of justice. To avoid this, Committee proposed that where complaint is filed and police Investigation also goes on for the same offence, the Magistrate shall stay the complaint case. If the police report is received, the two cases should be tried together. If no such report is received the Magistrate would be free to dispose of the complaint case. The Section intends to avoid a situation where the police is still investigating the offence and a complaint is filed in the Court relating to some facts. It may happen in such cases that accused persons may get acquittal by collusion and thereby defeat the aim of Criminal Justice, because the police investigation and report will become useless. The purpose is to prevent miscarriage of justice as a person may get acquitted by filing a complaint when the case is still being investigated by the police. That is why it has been provided that where offence is common to the complaint case and case arising out of police report, they have to be Inquired Into and tried together as if both cases have been instituted on police report. The object of the section is not to harass a person twice and also not to authorise a person to vindicate his honour when the case is being investigated by the police. The accusation in the complaint may ultimately prove to be false or unfounded. Sub-section (2) is a care and Sub-section (1) is a preventive measure. Court is not required to wait indefinitely for the report of police, and after reasonable time if no report is received from Police. Court can proceed in the complaint case in accordance with law. Requirements under Sub-section (1) of Section 210 of the Code are that when it is made to appear to the Magistrate about investigation by police in relation to the offence which is subject-matter of enquiry or trial held by him, he has to (a) call for a report from the police, and "b) stay further proceeding in the complaint case. The crucial question, therefore, is whether it is made to appear

to the Magistrate about the investigation by the police in relation to the offence. Statement in the complaint petition can provide the basis. But mere statement in the complaint case that information was lodged with police would not be sufficient, unless it is made to appear to the Magistrate that investigation is in progress in relation to the offence. While staying proceeding Court should direct the investigating officer to submit report under Sub-Section (1) within a particular time, and on failure to file report within a reasonable time Court can proceed with the complaint case. These basic features do not appear to have been considered by the learned Magistrate. In the circumstances of the case, I direct that the learned Magistrate shall call for a report from the Ghasipura Police Station as to whether any investigation by the police is in progress. If report from police is not received within three months from date of intimation, he shall be free to proceed with the complaint case.

5. It is also submitted by learned counsel for the petitioners that he shall highlight before the learned Magistrate that the ingredients necessary to constitute offence u/s 395, IPC do not exist; After receipt of the police report, if such a motion is made learned Magistrate shall deal with the same keeping in view of the guidelines indicated by the apex Court in K. M. Mathew v. State of Kerala (1992) 5 OCR 66. On appropriate application being filed, prayer for representation of the petitioners through counsel shall be accepted by the learned Magistrate till disposal of the motion relating to applicability of Section 395, IPC.

The N.B. Ws. shall not be executed in the meantime, it not already executed.

The Criminal Misc. Case is accordingly disposed of.