

(2003) 10 OHC CK 0035

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 248 of 2002

Abhimanyu Baliarsingh and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 31-10-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 294, 300, 307, 323, 324

Citation : (2004) CLT 8 (Suppl CrI) : (2004) 27 OCR 23 : (2004) OLR 8 (Suppl CrI)

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : D.P. Dhal, S.K. Tripathy, K. Dash, P.K. Routray and R. Dash, for the Appellant; Addl. Standing Counsel, for the Respondent

Judgement

A.S. Naidu, J.—Invoking inherent jurisdiction of this Court u/s 482 Code of Criminal Procedure the Petitioners seek quashing of the order dated 28.10.2002 passed by the learned J.M.F.C., Pipili in G.R. Case No. 117 of 2000. By the said order the Court below after perusing the materials available, took cognizance of the offences under Sections 341, 294, 323, 324, 506, 307/34 I.P.C. against the Petitioners.

2. Bereft of all unnecessary details, the facts alleged in the F.I.R. reveal that on 18.4.2000 at about 8 P.M. while the informant-opp. party No. 2 was proceeding on road, the accused-Petitioners being armed with deadly weapons restrained him and in course of such restraint, some of the accused-Petitioners assaulted him by "Tada". It was also alleged that accused-Abhimanyu Baliarsingh assaulted the informant on his head by means a sword as a result of which the informant fell down on the ground. Thereafter, some other accused persons assaulted him and when the informant escaped, accused Abhimanyu threatened him. On the basis of the said F.I.R., Delanga P.S. Case No. 46 of 2000 was registered which was subsequently converted to G.R. Case No. 117 of 2000. After completion of investigation, police submitted chargesheet against the Petitioners and the

learned Magistrate on receipt of the chargesheet took cognizance of the offences as stated above.

3. The main thrust of submissions advanced by Mr. Dhal, learned Counsel for the Petitioners, is that there was neither any intention of the Petitioners to cause death of the injured, nor any of the ingredients as spelt out u/s 307 I.P.C. is there in the present case. It is also submitted that the injury report (medical report) would clearly reveal that all the injuries sustained by the informant were simple in nature and as such, the Court below has committed material irregularity and acted in excess of his jurisdiction in taking cognizance of the offence u/s 307 I.P.C.. Mr. Dhal also invited my attention to the medical report relating to the injured, which clearly reveals that the injuries were simple in nature.

4. The essence of the offence u/s 307 I.P.C. is an attempt to murder; even otherwise, the assault would be of such nature that if the same went unrestricted, would have resulted in the death of the injured. While taking cognizance of the offence u/s 307 I.P.C. what is important to find out is the intention of the assailant and the accompanying action in execution of the intention i.e. to commit murder. In order to satisfy the ingredients of the offence, the prosecution must establish that the intention of the accused was one of the three kinds mentioned in Section 300 I.P.C.. The state of the mind of the accused has to be deduced from the surrounding circumstances. The motive of the assailant is also an important factor which needs to be taken into consideration while taking cognizance of the offence u/s 307 I.P.C..

5. In the case at hand, the learned Magistrate on perusal of the materials available in the case diary has taken cognizance of the offence u/s 307 I.P.C. read with other Sections. After perusing the injury report (Medical report) and the statements recorded, I am satisfied that all the injuries caused were simple in nature. The intention to commit murder of the informant was also very much lacking, inasmuch as the injuries sustained by the informant alleged to have been inflicted by six accused persons with deadly weapons could not have been simple ones. Having given my anxious consideration to the totality of the facts and circumstances of the case and the nature of the injuries, I have no hesitation to hold that the learned Magistrate was not justified in taking cognizance of the offence u/s 307 I.P.C..

6. I, therefore, quash the impugned order so far as it relates to taking cognizance of offence u/s 307 I.P.C. and confine the said order to offences under Sections 341, 294, 323, 324, 506/34 IPC. The Court below is directed to conclude the trial as expeditiously as possible.

The CrI. Misc. Case is allowed in part.