
(2013) 07 OHC CK 0033
In the Orissa High Court
Case No : CRLMC No. 1818 of 2004

Akshaya Kumar Swain

APPELLANT

Vs

Dolagobinda Swain and Others

RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 482
Penal Code, 1860 (IPC) — Section 147, 294, 323, 34, 379

Citation : (2014) 1 ILR (Ori) 352 : (2013) 2 OLR 355

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : A.R. Dash, B.B. Patnaik, R.N. Behera, S.K. Nanda and M.C. Swain, for the Appellant; R.K. Kar, Learned Counsel, for the Respondent

Judgement

B.R. Sarangi, J.—The petitioner assails the order dated 27.05.2004 passed by the learned J.M.F.C., Kendrapara in I.C.C. Case No. 15 of 1999 rejecting the petition filed by the petitioner on 23.08.2002 in Annexure-2 to incorporate the ages of the accused persons in the complaint petition under Annexure-T dated 25.01.1999, which has been confirmed by the learned Additional District & Sessions Judge, Kendrapara by order dated 26.7.2004 in Criminal Revision Petition No. 16 of 2004 under Annexure-4. The petitioner's case in nut-shell is that he being the complainant, filed I.C.C. Case No. 15 of 1999 in the Court of learned S.D.J.M., Kendrapara against the opposite parties alleging commission of offences under Sections 323/294/147/379/506 read with Section 34, IPC, basing upon which the learned S.D.J.M., Kendrapara took cognizance of the offence after examining the complainant on oath. After the cognizance of the offence was taken, the learned S.D.J.M. transferred the case to the Court of learned J.M.F.C., Kendrapara. While the case was pending before the learned J.M.F.C., Kendrapara, a petition under Annexure-2 was filed seeking for incorporation of ages of the accused persons in the complaint petition, which is necessary for adjudication. The accused-opposite parties after being released on bail objected to the said petition filed by the complainant. By order dated 27.05.2004 under Annexure-3,

learned J.M.F.C. rejected the prayer of the complainant stating that there is no specific provision in the Code of Criminal Procedure for amendment of a complaint petition and therefore, the petition filed on behalf of the complainant to add the ages of the accused persons in the complaint petition is devoid of merit. Thereafter the complainant filed Criminal Revision No. 16 of 2004 before the learned Additional Sessions Judge, Kendrapara, who by order dated 26.7.2004 rejected the revision petition with the observation that the order of the Magistrate did not suffer from any infirmity and by rejection of such petition, no right of the party was decided nor the case was disposed of finally. He further observed that as the order was interlocutory in nature, the revision petition was not maintainable.

2. With this backdrop, the petitioner has filed this application invoking the jurisdiction of this Court u/s 482, Cr.P.C. with a prayer to quash the orders passed by the learned J.M.F.C. and learned Additional District & Sessions Judge, Kendrapara vide Annexures-3 and 4 respectively and has sought for direction to incorporate the ages of the accused persons in complaint petition in exercise of inherent power of this Court.

3. Entertaining the application, this Court by order dated 10.11.2004 while issuing notice to the opposite parties, passed an interim order staying further proceeding in I.C.C. Case No. 15 of 1999 pending before the learned J.M.F.C, Kendrapara.

4. On being noticed the accused persons entered appearance through their counsel who urged similar contentions and in course of hearing stated that Code of Criminal Procedure has not provided for any amendment. This Court cannot quash the order passed by the learned J.M.F.C. as well as the learned Additional District & Sessions Judge and order so passed are fully and wholly justified.

5. Mr. A.R. Dash, learned counsel for the petitioner, to substantiate his contentions, has relied upon the judgment reported in Vol. 32 (1990) OJD 359 (Criminal) Srimati Sabita Sahoo Vrs. Captain Khirod Kumar Sahoo in which this Court relying upon the judgment of the Apex Court reported in Bindeshwari Prasad Singh Vs. Kali Singh, wherein it has been held that though the subordinate criminal Courts are not vested with inherent power there is no doubt that this Court has got inherent power. Therefore, the petition filed to amend the application u/s 125 Cr.P.C. can also be considered by this Court in exercise of inherent power. The said decision has also been relied upon by the learned J.M.F.C. in the impugned order, but he has distinguished the same stating that the said case relates to a proceeding u/s 125, Cr.P.C., which is quasi civil in nature and besides that the accused persons in present case have already entered appearance and have been released on bail.

6. Mr. R.K. Kar, learned counsel appearing for the opposite parties, supported the impugned order stating that in the event amendment is allowed for incorporation of the ages of the accused persons in the complaint petition, it will cause

prejudice to the opposite parties.

7. In the above background of facts and law, it is to be considered whether this Court has got the power to allow the amendment for incorporation of ages of the accused persons in the complaint petition, which has been inadvertently left out at the time of filing. The incorporation of ages of the accused persons is highly necessary for just and proper adjudication of the matter as the opposite parties are accused persons in a complaint case and more so after taking cognizance, the accused persons have entered appearance and have been released on bail. Therefore, in the event the ages of the accused persons are incorporated in the complaint petition, it will no way prejudice either of the parties. The Code of Criminal Procedure has not made any provision for amendment of any application. Therefore, it is the only power left u/s 482 Cr.P.C. conferring jurisdiction on the High Court, which is inherent in nature to consider the application for amendment in the ends of justice. The learned Magistrate is wholly and fully justified in holding that he has no jurisdiction to entertain the application for amendment as there is no provision in the Criminal Procedure Code to allow the prayer for amendment. But while considering the application u/s 482 Cr.P.C. this Court is not precluded to exercise the inherent power in the ends of justice to incorporate the ages of the accused persons in the complaint petition as in the meantime they have surrendered and have been released on bail. By incorporating the ages of the accused persons in the complaint petition, it will not change the nature and character of the complaint petition as well as it will not prejudice the accused persons in any manner whatsoever.

8. This Court has considered a similar matter in the case of Maa Jagadamba Traders Vs. Goodlass Nerolac Paints, wherein this Court has gone to the extent of holding that the Magistrate has power to amend the petition where it is required to secure the ends of justice. In the said decision, the order of Magistrate allowing the amendment with regard to the name of the complainant-company has been challenged before this Court and this Court has held that no illegality or procedural irregularity is found out in the impugned order warranting interference of this Court by invoking the inherent power under the Code of Criminal Procedure and thereby confirmed the action of the Magistrate allowing the amendment. Therefore, in the event the ages of the accused persons are incorporated in the complaint petition, which have been left out inadvertently, no prejudice would be caused to anybody. Moreso, Mr. R.K. Kar, learned counsel appearing for the opposite parties fairly states that on the basis of the order of cognizance with the accused persons have already appeared and released on bail, there will be no infirmity in the event the amendment to the complaint petition is allowed and the ages of the accused persons are incorporated in the said petition.

9. In view of the aforesaid facts and circumstances in my considered opinion, the orders passed by the learned J.M.F.C., Kendrapara in Annexure-3 and the learned Additional District & Sessions Judge, Kendrapara in Annexure-4 are liable to be

set aside. Accordingly, the same are set aside with a direction to the learned J.M.F.C. to incorporate the ages of the accused persons in the complaint petition in order to secure the ends of justice. The complaint case being an age old case of the year 1999, learned J.M.F.C. is directed to complete the proceeding by the end of November, 2013. With the aforesaid observation and direction, the CRLMC is allowed accordingly.