

(2010) 08 OHC CK 0010
In the Orissa High Court
Case No : CRLMC No. 1725 of 2007

Amulya @ Kalia Behera and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 13-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468(2), 482
Penal Code, 1860 (IPC) — Section 294, 34, 341

Citation : (2011) 1 Crimes 678 : (2010) 2 ILR (Ori) 357 : (2010) 2 OLR 941 :
(2011) 8 RCR(Criminal) 3242

Hon'ble Judges : Indrajit Mahanty, J

Bench : Single Bench

Judgement

Indrajit Mahanty, J.—In the present application u/s 482 of the Code of Criminal Procedure, the Petitioners have sought to challenge the order dated 14.11.2006 passed by the learned J.M.F.C., Pipili in I.C.C. Case No. 16 of 2004 taking cognizance of offences under Sections 341 and 294 read with Section 34 of the Indian Penal Code.

2. On a perusal of the complaint filed by Opposite Party No. 2-Bishnu Chandra Behera, it appears therefrom that, the complainant has complained of two distinct occurrences which allegedly occurred on 1.9.2002 at Gudia Pokhari Chhak and on 15.5.2004 at Kausalyagang Out Post.

Insofar as the alleged incidence which occurred on 1.9.2002 is concerned, it is alleged that the Petitioners obstructed the complainant while he was travelling on the road and Petitioner No. 3-Bamadev Mahanty, who was on the relevant time posted as A.S.I. of Police at Kausalyagang Out Post threatened the complainant to withdraw the civil case filed by him against the father of Petitioner Nos. 1 and 2 and when the complainant did not agree for such withdrawal, Petitioner No. 3 asked the other Petitioners to assault him, in course of which, the complainant and his son, namely, Saroj, were assaulted by fist blows and stick and further that when the younger son of the complainant came to the spot, he was also

assaulted by means of an iron rod by Petitioner No. 1. It is further alleged that Petitioner No. 3 took away the motorcycle belonging to the son of the complainant and kept the same at the Out Post. As a consequence of which, the complainant was compelled to agree with the compromise of the civil suit filed by him against the father of Petitioner Nos. 1 and 2.

In so far as the second incident is concerned, it is alleged to have occurred on 15.5.2004. It is stated that Petitioner No. 3 misbehaved with Opposite Party No. 2 in the Kausalyagang Out Post and asked him to sign on a blank paper. When the complainant did not agree to the same, he was abused and given a push. It is further alleged that since several cases had been instituted against the complainant and since he was expecting the Petitioner No. 3 to return the vehicle (motorcycle) to the son of the complainant, since an amicable settlement had been arrived at by the concerned parties, he did not file the complaint at any earlier point of time.

3. Learned Counsel for the Petitioners submitted that insofar as the first occurrence on 1.9.2002 is concerned, since the complaint petition was filed on 10.6.2004 and order of cognizance was passed thereon on 14.11.2006, it is submitted that the learned Magistrate ought not to have passed the impugned orders of cognizance, so far as it is related to the first incident, since the same was barred by limitation.

While Section 341 I.P.C. prescribes punishment for simple imprisonment for one month or fine of Rs. 5000/- or both, Section 294 I.P.C. prescribes punishment for imprisonment of three months or fine or both. Therefore, in terms of Section 468(2) Code of Criminal Procedure since the alleged offences were punishable with imprisonment for term not exceeding one year, the period of limitation prescribed u/s 468(2) Code of Criminal Procedure is one year from the date of the alleged offence. Therefore, since the alleged offence took place on 1.9.2002, limitation for the same occurred one year therefrom and since the complaint was filed on 10.6.2004, the same was barred by limitation.

The alleged second incident has been occurred on 15.5.2004. It is submitted on behalf of the Petitioners that while it is alleged that Petitioner No. 3, abused the complainant and given two pushes, the exact words uttered by Petitioner No. 3 has not been disclosed in the complaint petition and further that, there is no material on record to evidence the fact that the alleged abuse created annoyance to the complainant.

4. Considering the aforesaid facts, insofar as the first part of the alleged occurrence is concerned i.e. on 1.9.2002, it is well settled by the Hon'ble Supreme Court in the case of *Japani Sahoo v. Chandra Sekhar Mohanty*, (2007) 38 OCR 309. that the relevant date for computing, the period of limitation must be the date of filing of the complainant or initiating the complain proceeding but not the date of the order of taking cognizance.

Therefore, clearly, insofar as the alleged offence under Sections 341 and 294

I.P.C. is concerned punishment for a period of three months is prescribed and, therefore, covered u/s 468(2) Code of Criminal Procedure and period of limitation prescribed, is a period of one year from the date of occurrence. The alleged occurrence took place on 1.9.2002 and the complaint came to be filed on 10.6.2004. Therefore, I am in complete agreement with the contention advanced on behalf of the Petitioner and held that, this part of the alleged offence which is stated to have occurred on 1.9.2002 in the complaint petition was clearly barred by limitation prescribed under the Code of Criminal Procedure.

Insofar as the second part of the alleged occurrence is concerned, i.e. 15.5.2004 and on a reading of the complaint, it is clear therefrom that the complainant has not stated any of the words that was allegedly uttered by the Petitioner No. 3. In the complaint petition, there is no material 1994(I) OLR 176 to substantiate the relevant fact that such abuse created annoyance to the complainant. In the case of Chakradhar Swain v. Maheswar Barik, (1994) 7 OCR 168, it was held that, the sine qua non for application of Section 294 I.P.C. is annoyance. The alleged abuse ought to have caused annoyance to the complainant and in the absence of any such assertion such act is not covered u/s 294 I.P.C. Therefore, a mere allegation of use of obscene words without mentioning that the words uttered and without complaining that the same has resulted in the annoyance to the complainant, cannot attract 1208 (II) OLR 362 a charge u/s 294 I.P.C., as is held in the case of State of Orissa v. Appa Rao¹ (2008) 41 OCR 484 and also in the case of V. Dhasiah v. The State (1994) 2 Crimes 67.

5. In view of the aforesaid facts as noted hereinabove, I am of the considered view that the order of cognizance in the present case ought not to have passed since the same was barred by limitation as well as do not satisfy the mandate of law.

6. Accordingly, the CRLMC is allowed and the impugned order dated 14.11.2006 passed by the learned J.M.F.C., Pipili in I.C.C. Case No. 16 of 2004 is quashed.