

(1999) 11 OHC CK 0002

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 2859 of 1997

Ayub Khan alias Md. Ayab

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 22-11-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Railway Property (Unlawful Possession) Act, 1966 — Section 3

Citation : (2000) 18 OCR 1

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : Addl. Standing, for the Appellant; B. Rath, B. Senapati, S.N. Mohapatra, K.R. Mohapatra, J.N. Rath, S.K. Jethy, P.S. Samantara and P.K. Panda, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—The petition has been filed u/s 482, Code of Criminal Procedure (in short, the "Code of Criminal Procedure") for quashing the F.I.R. No. 14/97, dated 27.7.1997 of R.P.F. Post at Rayagada and the proceeding in 2 (c) CC No. 50/97 pending in the Court of the Sub-Divisional Judicial Magistrate, Rayagada, on the basis of the aforesaid F.I.R.

2. It is alleged in the said F.I.R. that an offence has been committed u/s 3(a) of the Railway Property (Unlawful Possession) Act, 1966. The present Petitioner is named to be one of the accused persons. Prayer for quashing the F.I.R and the proceeding has been made mainly on the ground that there is no allegation against the Petitioner in the F.I.R, and save and except the statement of a co-accused person, there is no material against the Petitioner. The learned Counsel appearing for the State has submitted that since the investigation is still continuing the Petitioner's prayer for quashing the proceeding should not be entertained.

3. The learned Senior Counsel appearing for the Petitioner has placed reliance

upon the decisions reported in AIR 1982 Supreme Court, 949 (State of West Bengal and Ors. v. Swapan Kumar Guha and Ors.; AIR 1988 Supreme Court, 709 (Madhavni Jiwaji Rao Scindia and another etc. v. Sambhajirao Chandrojirao Angre and Ors. etc.); AIR 1989 Supreme Court, 2222 (State of V.P. through C.B.I., S.P.E., Lucknow and Bother v. R.K. Srivastava and Ors. and A.I.R 1992 Supreme Court, 2206 (K.M. Mathew v. State of Kerala and Bother). A close scrutiny of the aforesaid decisions makes it clear that a pending investigation in a criminal case can be quashed if the allegations contained in the F.I.R do not made out any offence. In the decision reported in AIR 1982 Supreme Court, 949 (supra), it was held that an investigation can be quashed if no cognisable offence is disclosed by the F.I.R. In the decision reported in AIR 1988 Supreme Court, 709 (supra), it was laid down that when a prosecution is asked to be quashed at the initial stage, the test to be applied is as to whether the uncontroverted allegations prima facie establish commission of any offence. It was further observed:

7. The Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

Similar view was expressed in the decision reported in AIR 1989 Supreme Court, 2222. The learned Senior Counsel has also relied upon the decisions reported in AIR. 1992 Supreme Court, 604 (State of Haryana and Ors. v. Ch. Bhajan Lal and Ors. and (1998) 14 OCR (SC) 1 (M/s. Pepsi Foods Ltd. and Ors. v. Special Judicial Magistrate and Ors.. The principles laid down in these decisions are not different from the principles already noticed.

4. Applying the tests laid down in the aforesaid cases, it cannot be held that the present proceeding should be quashed. By no stretch of imagination, it can be said that the allegations made in the F.I.R. do not prima facie establish commission of an offence. The learned Counsel for the Petitioner has however, submitted that the allegations in the F.I.R. taken in their entirety do not make out any case against the Petitioner. The aforesaid submission cannot be countenanced at this stage when the investigation is still going on. When the F.I.R. is to be quashed, the entire investigation stops. There is no question of directing quashing of the F.I.R. qua a particular accused person. If ultimately after investigation it is found that there is no material against a particular person, the prosecution agency may not file charge sheet against the particular accused person against whom no material can be discovered during investigation and even if any such charge sheet is subsequently submitted against an accused person without any material, the Court may not take cognizance, or even thereafter the order of cognisance, "if any, amy be quashed. Such a stage can arise only after investigation is complete. Before completion of investigation, there would be hardly any justification for quashing an F.I.R. which discloses

commission of an offence. It is the duty of the investigating agency to find out the culprits after due investigation. Only where the allegations in the F.I. R. do not make out commission of any offence whatsoever, such investigation can be quashed, as had been done in the case reported in AIR 1982 Supreme Court, 949. The decisions cited by the counsel for the Petitioner are not applicable at the present stage.

5. The learned Counsel for the Petitioner further submitted that the only material against the Petitioner so far collected being the statement of a co-accused, it is a fit case where the proceeding should be quashed. This submission is again untenable. Only after completion of investigation, the materials relied upon by the prosecution against a particular accused person can be found out and the proceeding should not be and cannot be quashed mid-way on the allegation that the investigation till that stage does not establish any prima facie case against a particular accused person.

6. For the aforesaid reasons, I am unable to accept the prayer for quashing the proceeding at this stage.

7. The Criminal Misc. Case is accordingly dismissed.