
(1998) 12 OHC CK 0029

In the Orissa High Court

Case No : Criminal Miscellaneous Case No's. 2397 of 1993, 484 and 3559 of 1995, 870, 947, 3480, 3922, 3921, 3617, 3035, 1121 and 3671 of 1996, 599, 865, 360, 879, 780, 1138 and 602 of 1997

Basanta Kumar Baral and Others

APPELLANT

Vs

State of Orissa and Others and Kishore Chandra Das and Another etc. etc.

RESPONDENT

Date of Decision : 11-12-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(8), 320(9), 397(1), 397(3)

Citation : (1999) 87 CLT 712

Hon'ble Judges : S.N. Phukan, C.J.;A. Pasayat, J

Bench : Division Bench

Advocate : B.K. Bal, A.K. Rao, M.K. Mohanty, P.K. Sahu, S.K. Rath, D. Nayak, G.K. Misra, H.P. Rath, M.K. Das, A.K. Nanda, B.K. Sahu, G. Tripathy, A.K. Acharya, S.C. Sahoo, R.K. Nayak, H.S. Pati, D.P. Dhal and G.N. Mohapatra, for the Appellant; A.G.A., A.K. Ray, P.K. Lenka, in Crl. Misc. Case No. 1138/97 and A.K. Mohapatra in Crl. Misc. Case No. 360/97, for the Respondent

Judgement

A. Pasayat, J.—Since there is divergence of view expressed by two learned Judges as regards power of the High Court to quash a criminal proceeding by exercise of inherent power u/s 482 of the Code of Criminal Procedure, 1973 (in short, the "Code") in respect of a non-compoundable offence, reference has been made to a Division Bench and that is how the matter is before us.

2. According to learned Counsel for the accused, in view of the clear language of Section 482 of the code which provides that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice, exercise of power u/s 482 is permissible. It is stated that when a compromise has been effected between the parties with a view to bring in better relationship or to take care of litigations which are founded on misconception, misgivings or as a

measure of harassment, it is the duty of the Court to exercise power u/s 482 of the Code in appropriate cases. It is stated that if such compromises are not accepted, many innocent people will be made victims of machinations and once good sense has prevailed and the victim wants to withdraw the accusations, the Court should give effect to the intention of the parties to settle their disputes amicably.

3. Learned Counsel for State has submitted that there is express power provided in Section 320 of the Code. Such compromise is not permissible where it is not so specifically provided. It is stated that in the background of Section 320 of the Code, it can be said that there are three categories of cases, i.e. (a) offences which can be compounded by aggrieved person; (b) offences which can be compounded with the permission of the Court; and (c) offences which cannot be compounded at all. With reference to Sub-section (9) of Section 320 of the Code it is stated that there is absolute bar to the effect that no offence shall be compounded except as provided in this section (meaning Section 320). It has also been urged that Section 482 cannot be exercised when there is express bar/prohibition made on a Court that the matter is specifically covered by other provisions of the Code.

4. It is necessary to quote Sections 320 and 482 of the Code, the relevant provisions of which read as follows:

32. Compounding of offences - (1) The offences punishable under the sections of the Indian Penal Code (45 of 1860), specified in the first two columns of the Table next following be compounded by the persons mentioned in the third column of that table:

TABLE

Offence Section of the Indian Penal Code applicable Person by whom offence may be compounded

XXX XXX XXX

(2) The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of the table -

TABLE

Offence Section of the Indian Penal Code applicable Person by whom offence may be compounded

XXX XXX XXX

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this section.

482. Saving of inherent powers of High Court - Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

5. The scope and ambit of exercise of power u/s 482 of the Code vis-a-vis prohibition contained in the Code have been considered by the apex Court in many cases. In *Krishnan and Anr. v. Krishnaveni and Anr.* 1997 (1) Crimes 97 (SC) the apex Court as considering the scope of exercise of power u/s 482 notwithstanding the prohibition under Sub-section (3) of Section 397 on entertaining a revision which formed subject-matter of consideration before the lower Court under revisional jurisdiction. The object behind criminal law is to maintain law, public order, stability as also peace and progress in the society. High Court has suo motu power u/s 401 and continuous supervisory jurisdiction u/s 483 of the Code. When the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the Courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate required correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be, justified, under such circumstances to exercise the inherent power. It was observed in *Krishnan's* case (supra) that in an appropriate case even revision power u/s 397(1) read with Section 401 of the Code can be exercised. But it has to be borne in mind that it has to be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. Unfortunately the recent trend is to delay the trial and threaten the witnesses or to win over the witness by promise or inducement. The malpractice need to be curbed and public justice can be ensured only when expeditious trial is conducted.

6. It has to be noted that in Section 482 it is provided that nothing in the Code, which would also include bar under certain provisions, shall be deemed to limit or affect the inherent powers of the High Court. It was held in *Madhu Limaye Vs. The State of Maharashtra*, that though the High Court has no power of revision is an interlocutory order, still the inherent power will come to play when there is no provision for redressal of the grievance of the aggrieved party. In *V.C. Shukla Vs. State through C.B.I.*, , it was observed per majority that Sub-section (3) of Section 397 does not limit at all the inherent powers of the High Court contained in Section 482.

In *Krishnan's* case (supra), it was observed that though the revision before the High Court under Sub-section (1) of Section 397 is prohibited by Sub-section (3)

thereof, inherent power of the High Court is still available u/s 482 of the Code and as it is paramount power of continuous superintendence of the High Court u/s 483, the High Court is justified in interfering with the order leading to miscarriage of justice.

It has to be noted that Section 482 saves inherent power of High Court postulating that "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice". Section 483 enjoins upon every High Court to so exercise its continuous superintendence over the Courts of Judicial Magistrate subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates. It is, therefore, clear that the power of the High Court of continuous supervisory jurisdiction is of paramount importance to examine correctness, legality, or propriety of any finding, sentence or order, recorded or passed as also regularity of the proceedings of all inferior criminal Courts.

7. The inherent power in the High Court is an inalienable attribute of the position it holds with respect to the Courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. When one speaks of "ends of justice" the expression is not used to comprise within it any vague or nebulous concept of justice, nor even justice in the philosophical sense, but justice according to law, i.e., statute law and the common law. The power is also not exercisable every time the High Court finds that there has been a miscarriage of justice. Inherent powers are in the nature of extraordinary powers available only where no express power is available to the High Court to do a particular thing and where the express power does not negative the existence of such inherent power. A further condition to its exercise is that it must be necessary to resort to it for giving effect to an order under the Code for preventing an abuse of the process of the Court or for otherwise securing the ends of justice. When a Court has authority to make an order, it must also have the power to carry it out into effect; otherwise, it will be useless to make it.

8. All Courts, whether civil or criminal, possess in the absence of an express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). This section confers no new jurisdiction or powers on the High Courts. It merely safeguards all existing inherent powers possessed by them necessary to secure the ends of justice. These powers which the Court inherently possesses have been preserved lest it be considered that the only powers possessed by them are those expressly conferred by the Code and that

no inherent power had survived the passing of the Code. The terms of the section are wide, but they do not extend the jurisdiction of the High Court to matters which are not already inherently within the jurisdiction.

9. The inherent jurisdiction u/s 482, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. The power is to be exercised very sparingly and in exceptional cases only. The High Court will not interfere under this section when there is no manifest or patent injustice apparent on the face of the record, or when the injustice alleged is of doubtful character and not of a grave nature. The power is to be exercised *ex debito justitiae* to do the real and substantial justice for the administration of which alone Courts exist.

The High Court must therefore be careful to see that its decision is based on sound general principles of criminal jurisprudence. Where the proceedings initiated appear to be vexatious or without any legal evidence, or as being without jurisdiction, the High Court should not decline to exercise the power. Recourse to Section 482 cannot be permitted in the garb of an application filed under some other provision of law.

10. The authority of the Court exists for the advancement of justice, and if any attempt is made to abuse that authority, so as to produce injustice, the Court must have power to prevent that abuse. In the absence of such power the administration of law would fail to serve the purpose for which alone the Court exists, namely, to promote justice and to prevent injustice.

11. The High Court has been given powers u/s 482, in addition to what it possesses under its Charter and Letters of Patent, to interfere in order to secure the ends of justice. As this section has been enacted to emphasise the facts that the High Court has the widest jurisdiction to pass orders to secure the ends of justice, it must give the power to the High Court to entertain applications which are not contemplated by the Code. Therefore, if the High Court feels that the ends of justice require that an order should be made in an application, although the application is not contemplated by the Code, the High Court will entertain the application and make the necessary orders to secure the ends of justice.

12. At the juncture it is also relevant to take note of the decision of the apex Court in *K.M. Mathew Vs. State of Kerala* and another, . The question involved in the said case was whether after the process is issued by the Magistrate against the accused the Magistrate shall drop the proceeding if after appearance the accused files a petition to cancel the process as there is no *prima facie* case against him for which he would be tried and the process ought not to have been issued. It was observed that though there is no specific provision, yet if on being satisfied the Magistrate feels so on reconsideration of the complaint he can drop the proceeding. It is his judicial discretion. It was further observed that no prosecution should be tried without a *prima facie* case.

13. As observed by the apex Court in *Madhavrao Jiwajirao Scindia and Others Vs.*

Sambhajirao Chandojirao Angre and Others, , the legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that 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.

14. Effect of compounding u/s 320 of the Code is also an order of acquittal as provided under Sub-section (8) thereof. Effect of quashing a criminal proceeding u/s 482 of the Code is in essence an order of acquittal. Such power is to be exercised at the time of investigation or before conclusion of trial. Quashing of the proceeding wipes out the proceeding, and the ultimate effect is an order of acquittal.

15. In the background of what has been stated above, it is clear that Section 482 of the Code can be utilised to secure the ends of justice in cases where compounding is not permissible u/s 320 of the Code. But it is not to be exercised in a routine manner. As was observed by the Apex Court in Krishnan and Anr. "s case (supra), it can be utilised to meet the ends of justice or to prevent the abuse of process of law. It has to be sparingly used and only when the Court is satisfied that by exercise of it needless multiplicity of proceedings, unnecessary delay in trial and protraction of proceedings can be avoided, it can be done. Merely because an affidavit or petition has been filed by the parties that they have sorted out their differences, that would not suffice. In every case, the Court has to be satisfied that the compromise was voluntary and was not the result of any intimidation, threat, coercion or undue influence. In large number of cases it is noticed that compromises are obtained by intimidation, show of muscle and money power. In cases where there is scope for a suspicion that apparent is not the real, Court should not exercise power u/s 482., That would not be a step for securing ends of justice, but on the other hand it would amount to destruction of credibility of the institution, and its ultimate result would be ignoble and immoral. Notwithstanding the compromise, the Court should ask the parties to appear before the lower Court for verification of the statements regarding compromise and the investigating agency should be directed to submit a report expeditiously, in order to avoid unnecessary delay in the trial and protraction of proceedings. Court has to lift the veil of so-called restoration of fellow-feeling, desire to wipe out differences and clearance of misunderstanding. The truth has to be unravelled. Only when the Court is satisfied about the bona fides, then it can entertain the prayer to exercise inherent power. Normally relevant materials are to be scanned through which would not be an easy job. Therefore, the

correctness of the statements regarding compromise can be more effectively examined by the trial Court and if necessary trial can be taken up immediately to put an end to the litigation. Only when the High Court is satisfied about the genuineness of the compromise beyond shadow of doubt, it can exercise inherent power. The Court in such matters has to adopt strong attitude and no liberal attitude is to be shown, as there is every possibility of the victim being made to suffer further on account of machinations by the offender. Out answer, therefore, is that there is no bar for exercise of power u/s 482 in respect of a case which involves non-compoundable offence in terms of Section 320 of the Code. But the power has to be most sparingly used in appropriate cases. It has to be the exception and not the rule.

The reference is accordingly answered.

S.N. Phukan, C.J.

16. I agree.