
(1988) 11 OHC CK 0020
In the Orissa High Court

Bhabendra Dwibedi

APPELLANT

Vs

Pravakar Mishra and Others

RESPONDENT

Date of Decision : 29-11-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 157, 173, 210, 378
Penal Code, 1860 (IPC) — Section 323, 426, 447

Citation : (1989) CriLJ 1841

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Judgement

S.C. Mohapatra, J.—In an application for special leave u/s 378(4) Cr. P.C. by the complainant against an order of acquittal the main point urged is the validity of the trial of the accused persons to be acquitted which is alleged to be in contravention of Section 210 Cr. P.C.

2. Section 210 Cr. P.C. reads as follows:

210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer u/s 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

3. This section was brought to the statute book for the first time in the year 1973. Object behind the incorporation of such section is stated by the Joint Committee to be as follows:

It has been brought to the notice of the committee that sometimes when a serious case is under investigation by the police, some of the persons concerned file a complaint and quickly get an order of acquittal either by collusion or otherwise.

Thereupon the investigation of the case becomes infructuous leading to miscarriage of justice in some cases. To avoid this, the committee has provided that where a complaint is filed and the Magistrate has information that the police is also investigating the same offence, the Magistrate shall stay the complaint case. If the police report is received in the case, the Magistrate should try together the complaint case and the case arising out of the police report. But if no such report is received, the Magistrate would be free to dispose of the complaint case.

The object, thus, makes it clear that the same is to bring the offender to book than being of assistance to a complainant.

4. In the present case, the complaint petition discloses that the complainant reported the occurrence at Durgadevi outpost on the day of occurrence. The Assistant Sub-Inspector of Police sent the complainant and his son for medical examination to Remuna hospital. Thereafter no action having been taken by the police, the complaint was filed. In the initial deposition also the same was the statement and in evidence complainant also asserted the same. With this evidence, complainant examined six witnesses and exhibited six documents of which Ext.1 is the station diary entry at Durgadevi Out-post. Exts. 2 and 3 are the requisitions by the Assistant Sub-Inspector of Police to the Medical Officer for examining the injured. Exts. 5 and 6 are the injury reports. Trial court appreciated the evidence and has found that on account of infirmities in the evidence added to unexplained inordinate delay in filing of the complaint, the complainant has failed to bring home the guilt to the accused and, accordingly, they were acquitted of the offence under Sections 323/426/447 I.P.C.

5. Normally in an appeal against acquittal there would be no interference by the Appellate Court if the same is based on appreciation of evidence which cannot be held to be unreasonable. Even if the ground of delay in filing the complaint fails, there would be no scope for interference in this case which is based on appreciation of evidence which cannot be said to be unreasonable.

6. Mr. Sutar, learned Counsel for the complainant-applicant submitted that in

view of the provision in Section 210 Cr. P.C., the trial is vitiated since the matter was pending for investigation by the police. If the complainant would have raised such a question when the trial court commenced the trial, the matter might have been different. Complainant however, participated in the trial, examined witnesses and took a chance for conviction of the accused persons. In such a case the complainant having acquiesced to the trial from this conduct the learned Magistrate could not have come to a conclusion that an investigation by the police in respect of the same offence is in progress merely because at one stage the Assistant Sub-Inspector of Police of the Out-post sent a requisition to the Medical Officer to examine the injured persons.

7. Provision has been made in the Code with regard to the investigation of the offence in Chap. XII. Section 154 provides that information is to be lodged before an Officer-in-charge of a Police Station. Complainant ought to have lodged the information in the Police Station . in case he wanted investigation by the police. If such an information would have been lodged a copy of the information which would have been reduced to writing would have been given to the complainant by the Investigating Officer u/s 154(2) of the Act. Procedure for investigation has been provided for in Section 157 Cr. P.C. It provides that the Officer-in-charge on receipt of the information is to send forthwith a report to a Magistrate empowered to take cognizance of the offence under a police report and the Officer-in-charge is to proceed to the spot or depute his subordinate officer to proceed there to investigate the facts and circumstances of the case. There is no evidence that the Officer-in-charge received the information and deputed the Assistant Sub-Inspector of the Out-post, who is subordinate to him to proceed to the spot to investigate. In case the Officer-in-charge would have refused to reduce the information to writing the informant had a right to make a complaint of the same before the Superintendent of Police u/s 154(3) Cr. P.C. When these facts are wanting in the present case mere requisition to examine the injured persons by the Assistant Sub-Inspector of Police of the Out-post who is not the Officer-in-charge cannot give an appearance to the learned Magistrate that an investigation against the accused persons in respect of the same offence is in progress. There is also no material to prove that the Officer-in-charge sent the information to the Magistrate as required u/s 157 Cr. P.C. Thus, on the facts of this case, I am not satisfied that the trial on the basis of the complaint petition was in contravention of Section 210 Cr. P.C.

8. In the result, there is no merit in this application which is accordingly rejected.