
(2007) 05 OHC CK 0063

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 357 of 2007

Bhimsen Nayak

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 09-05-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 436

Citation : (2007) 2 OLR 1053 Supp

Hon'ble Judges : A.K. Samantaray, J

Bench : Single Bench

Advocate : Sangram Kumar Sahoo, for the Appellant;

Final Decision : Allowed

Judgement

A.K. Samantaray, J.—Heard learned Counsel for the Petitioner and the learned Addl. Standing Counsel appearing for the State.

2. The Petitioners have been charge sheeted u/s 436/34 of the IPC on the allegation that at about 3.00 A.M. in the night of 18/19.12.2005 they set fire to the dwelling house of the informant Bhaskar Jena, as a result of which the roof of the house got gutted and the informant hearing the barking sound of the dog got up and found these Petitioners running away. Subsequently, other people joined the complainant and extinguished the fire. FIR was lodged and the police investigated the matter after registering Pipili P.S. Case No. 343 of 2005 dated 19.12.2005 u/s 436/34 of IPC and submitted charge sheet on which the learned J.M.F.C., Pipili passed order on 3.5.2006 taking cognizance of the offence u/s 436, IPC against these three Petitioners.

3. The learned Counsel for the Petitioners submits that on a bare reading of the evidence recoded by the police, the copies of which are produced for my perusal, it is found that the house which was alleged to be set on fire was not a dwelling house as the evidence of the wife of the informant goes to show that the house had no door leaves and window leaves and it was not plastered and was not

made habitable and only thatched roof was put on it. Apart from that, it is also found from the copies of the statements recorded by the I.O. that the major sons of the informant who got up first and seeing the fire shouted did not see any of the accused/Petitioners running away and it is improbable totally on the part of the informant to see them who came only after his sons raised cry seeing the house ablazing. it is also found in the statement of the wife of the informant that pertaining to some landed property there was litigation as well as differences with the Petitioners.

4. From the aforementioned factual aspects which are before me and after hearing the learned Counsel for the Petitioners as well as the learned Addl. Standing Counsel, I find that there is absolutely no material for submission of the charge sheet u/s 436, IPC against these Petitioners implicating them as accused in G.R. Case No. 462 of 2005 corresponding to Pipili P.S. Case No. 343 of 2005.

5. At this point, learned Addl. Standing Counsel submits that since the charge sheet has been submitted against the accused/Petitioners they can go and agitate this fact before the Magistrate as well as the Sessions Court to which they be committed. But I find no substance in the submission because it would end in a futile exercise and would only kill the time of the Court for no fruitful reason and only result in the abuse of process of the Court. The very nature of the material on which the structure of the prosecution rests is sufficient to quash the proceeding in the interest of justice.

6. In the result, the proceeding in G.R. Case No. 462 of 2005 corresponding to Pipili P.S. Case No. 343 of 2005 pending in the Court of J.M.F.C., Pipili is quashed.

7. The CRLMC is accordingly allowed.