
(2003) 05 OHC CK 0024

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 2723 of 2001

Bibhu Prasad Mohapatra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-05-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 294, 34, 341, 384, 392

Citation : (2003) CLT 809 (Suppl CrI)

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : S.S. Das, for the Appellant;

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The application had been initially filed under Articles 226 and 227 of the Constitution of India but subsequently by order dated 5.4.2001 the same has been converted to one u/s 482, Code of Criminal Procedure

2. The Petitioner in this petition prays for quashing I.C.C. No. 15 of 2001 pending in the Court of the learned J.M.F.C. (Rural), Cuttack. From the order-sheet it appears that notice on opposite party No. 2 could not be served as a result of which the same was published in the news paper and on such publication notice on opposite party No. 2 was accepted as sufficient. Inspite of such notice also the opposite party No. 2 has not appeared before this Court. Since notice was issued on the question of admission and final disposal, this matter was taken up for hearing on consent of the learned Counsel for the Petitioner and learned Counsel for the State.

3. From the complaint petition filed before the learned Magistrate, it appears that the opposite party No. 2 filed a complaint alleging commission of offences under Sections 341, 294, 392, 394, 384, 506 and 34 of the Penal Code. The case of the complainant-opposite party No. 2 is that the accused persons have formed a

firm, named and styled J.S.S. Consultancy Services Private Limited and conducting business of sanctioning loan to the customers for purchase of vehicles. It is alleged that the complainant wanted to avail the loan for purchasing a Car (Maruti-Zen) on the basis of hire purchase agreement. The loan was sanctioned and paid on 29.7.1999 directly to the supplier to deliver the vehicle to the complainant and the vehicle was thereafter registered with the authorities and was assigned No. Or-02-M-0207. It is also alleged that the complainant was paying the loan amount since 1st August, 1999 regularly and was obtaining receipts from the accused persons. According to the complainant, he found some mistakes and discrepancies relating to repayment of the loan amount and met the accused persons sometime in July, 2000 to rectify the mistakes. It is alleged that during such discussion with the accused persons the complainant was threatened. Thereafter, on 18.2.2001 when the complainant and his wife were coming to Cuttack in the car to consult their advocate regarding the incident which happened in respect of their computer institution, near Balikuda under Sadar Police Station, Cuttack one car came in front of their car and apprehending danger, the complainant stopped the car. It is alleged that the accused persons along with 3 to 4 anti-socials got down from the car and surrounded the vehicle of the complainant and forcibly dragged him and his wife out of the vehicle. It is also alleged that the accused No. 1 namely, Satyanarayan Das, took away a revolver from his pocket and the other anti-socials who had accompanied the accused persons under threat assaulted by means of arms, forcibly took away the vehicle and proceeded towards Bhubaneswar abusing the complainant and his wife in obscene language. It is also alleged that while taking away the vehicle one gold ring from the finger of the complainant and one gold chain from the wife of the complaint were also taken away. On the basis of such complaint, it appears that an inquiry u/s 202, Code of Criminal Procedure was made by the learned Magistrate and by order dated 7.4.2001 the learned Magistrate took cognizance of the offences under Sections 341, 294, 394, 506 and 34 of the Penal Code and issued summons to the accused persons for their appearance.

4. The learned Counsel for the Petitioner Shri S.S. Das submitted that the co-accused namely, Bijoy Kumar Sahoo against whom exactly similar allegations were made had approached this Court in Criminal Misc. Case No. 2722 of 2001 and by judgment dated 21.3.2003 this Court quashed the proceeding so far as the said co-accused is concerned.

5. On perusal of the complaint and the materials placed before the learned Magistrate, it appears that though it is alleged in the complaint in a general manner that all the accused came along with 3 to 4 anti-socials and took away the vehicle, there is absolutely no allegation of any kind of overt act so far as the present Petitioner is concerned. On comparison of materials available against the present Petitioner and against the co-accused Bijoy Kumar Sahoo, I do not find any difference. Since on consideration of the materials, this Court has already quashed the proceeding in respect of the co-accused, there is no reason for

refusing the prayer of the Petitioner.

6. Accordingly, the Criminal Misc. Case is allowed and I.C.C. No. 15 of 2001 pending in the Court of the learned J.M.F.C. (Rural), Cuttack so far as the present Petitioner is concerned, stand quashed.

7. Crl. Misc. Case allowed.