

(2003) 04 OHC CK 0044

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 8803 of 2001

Bidhu Bhusan Rath and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 24-04-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 288, 290, 323, 337, 34
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2003) 25 OCR 669 : (2003) 2 OLR 21

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : B.P. Ray, S. Pujhari, P.K. Patnaik and B. Sahoo, for the Appellant;
Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

B.P. Das, J.—This is an application u/s 482 of the Code of Criminal Procedure (Cr.P.C. in short) with a prayer to quash the order dated 8.9.1997 passed by the Addl. Sessions Judge-cum-Special Judge. Khurda, in G. R. Case No. 3120 of 2000 taking cognizance against the petitioners of the offences u/s 288/290/337/341/504/323/34 of the Indian Penal Code (IPC in short) and Section 3 (ii) and (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "the Act") and issuing processes against them.

2. The petitioners in this application have mainly taken two grounds: (i) that no case has been made out for the offences for which cognizance has been taken against the petitioners; and (ii) that even though the case was registered against the petitioners for the offence u/s 3 (ii) and (x) of the Act and cognizance Decided on 24th April, 2003. was taken thereunder, investigation has not been done by a Deputy Superintendent of Police as required by the statue.

3. The facts of the case, as reveal from the F.I.R. are that one Sujan Digal, who

was a rickshaw-puller, reported before the Sahidnagar police station on 13.2.1996 to the effect that at about 12.30 p.m. the roof centering of the newly constructed Union Bank building at Nayapalli collapsed along with the roof as a result of which some labourers working there sustained injuries. When the informant reported the incident to the contractor and requested him to rescue the injured labourers, the latter abused the informant in obscene language and by uttering the name of his caste, i.e., "Kandha", dealt some fist blows on his face. Basing upon the F.I.R. the police took up investigation and arrested the contractor-Ramani Ranjan Das. who was undertaking the aforesaid contract work and allegedly assaulted the informant. Thereafter the police arrested petitioner No. 1 - Bidhu Bhusan Rath, who was subsequently released on bail. After the investigation was completed, charge-sheet was submitted against the three petitioners as well as the contractor- Ramani Ranjan Das showing petitioner Nos. 2 and 3 to be the absconders. After submission of the charge-sheet cognizance was taken of the offences as stated herein before.

4. It is submitted by the learned counsel for the petitioners that the allegations made in the F.I.R as well as the statements of the witnesses recorded u/s 161, Cr.P.C. during the investigation do not directly or vicariously make the petitioners liable for the offences under Sections 341/323/504/34, I.P.C. read with Section 3 of the Act. On perusal of the F.I.R. I find that there is no allegation against the petitioners that they had made any wrongful restraint of the informant or voluntarily caused hurt or intentionally insulted anybody else with an intent to provoke breach of the peace or knowing the informant to be a man of Scheduled Caste had committed such offence or had shared the common intention with anybody else for commission of the aforesaid offences. The F.I.R. is very clear. It is stated therein that the informant was assaulted when he requested the contractor to rescue the labourers from the site of accident. One Harish Chandra Pandey, S.I. of Police of Sahidnagar P.S., who on getting information visited the spot along with two other S.Is. and the I.I.C. of the P.S., in his statement has stated that the informant alleged before the I.I.C that the contractor- Ramani Ranjan Das abused him in obscene language and dealt some blows on his face. There is no allegation at all against the present petitioners implicating them with the alleged offences in any manner. That apart, one Surendra Sirka, who was working in the work site as a helper to the carpenter, in his statement u/s 161. Cr.P.C. has stated that while the roof casting of the building was continuing, the centering of the roof collapsed as a result of which 6-7 labourers were injured and immediately Ramani Ranjan Babu sent them to the Capital Hospital for treatment in an auto- rickshaw. To the same effect is the statement of one Bhaskar Chandra Adhikari, Prahalad Kumar Sinha and Panu Patra in their statement u/s 161. Cr.P.C. have stated that it was Ramani Ranjan Das. who assaulted the rick-shaw-puller, i.e., the informant.

5. Law is well settled that in a proceeding u/s 482, Cr.P. C, the Court should be at loath to quash the cognizance at the threshold of the proceeding, but at the same time, when a case has not been made out against the accused on a bare

reading of the F.I.R. or the charge-sheet and taking the prosecution story in toto, it would not be proper for the Court to allow the criminal trial to continue against the accused persons when chances of their ultimate conviction is bleak and no useful purpose is likely to be served by allowing the criminal prosecution to continue. Here is a case where there is nothing to implicate the present petitioners in the offences as alleged against them.

6. Coming to the second question, from the record it appears that the final form u/s 173 of the Cr.P.C. was forwarded by the Inspector-in-charge of Sahidnagar Police Station, 1, however, find that, even if case was registered for the offence u/s 3 of the Act and cognizance was taken thereunder, investigation into the said offence was not done by a designated Police Officer in terms of the statutory provisions, i.e, by a police officer not below the rank of a Deputy Superintendent of Police, but by a Sub-Inspector of Police and the charge-sheet was also filed by him on the basis of which cognizance was taken against the petitioners.

I had the occasion to examine a similar question In re: Sessions Judge-cum-Special Judge, Cuttack (2002) 22 OCR 92, wherein it was held thus - "

"Hence, on a conjoint reading of the provisions of Section 20 and Section 23 of the Act, the irresistible conclusion that can be drawn is that the investigation can only be done by a police Officer not below the rank of a Deputy Superintendent of Police and that the Deputy Superintendent of Police shall be appointed by the State Government / Director-General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it and before appointing such persons, in my view, the authorities must record their satisfaction on the aforesaid aspects."

7. In view of the aforesaid facts and circumstances, and as the investigation into the offence u/s 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has not been done by the designated police officer as required by the statute, and as no case has been made out against the petitioners for the offences for which cognizance has been taken, the proceeding initiated against the present petitioners in G.R. Case No. 3120 of 2000 on the file of the Addl. Sessions Judge-cum-Special Judge, Khurda, is hereby quashed. Consequently, the order taking cognizance against the present petitioners and issuing processes against them are also quashed.

8. The criminal misc. case is accordingly allowed.