
(2017) 07 OHC CK 0040

In the Orissa High Court

Case No : 1341 of 2005

Braja Sundar Narendra Guman Singh

APPELLANT

Vs

State of Orissa and another

RESPONDENT

Date of Decision : 03-07-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 197](#) - Saving of inherent powers of High Court - Prosecution of Judges and public servants
[Indian Penal Code, 1860](#)

Citation : (2017) 07 OHC CK 0040

Hon'ble Judges : S.K. Sahoo

Bench : SINGLE BENCH

Advocate : Ajodhya Ranjan Dash, Prem Kumar Patnaik

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. The petitioner in this application under section 482 Cr.P.C. has challenged the impugned order dated 22.01.2003 passed by the learned J.M.F.C., Kantabanji in G.R. Case No. 95 of 2002 in taking cognizance of the offences punishable under sections 420/468/120-B of the Indian Penal Code and issuance of process against him.
3. The prosecution case as per the first information report lodged by the B.D.O. in-charge, Muribahal dated 13.06.2002 is that the petitioner was the Ex-B.D.O. in-charge who received letter no.6655 dated 23.04.2002 addressed to the B.D.O., Muribahal from the Collector, Bolangir and after receiving that letter and on the strength of that letter, he issued a cheque of Rs.1, 05,000/-(rupees one lakh five thousand) in favour of coaccused Hari@ Satya Narayan Bahidar towards the payment fourteen numbers of ring wells. As per the first information report, subsequently it was found that no such letter has been issued either from the office of the Collectorate, Bolangir or from the Collector's residence office at

Bolangir and the letter was forged one.

4. On the basis of such report addressed to the Officer in-charge of Muribahal outpost, station diary was made and it was forwarded to Kantabanji police station for registration and accordingly Kantabanji P.S. Case No.39 dated 13.06.2002 was registered under sections 420/468 of the Indian Penal Code and after completion of investigation, charge sheet was submitted under sections 420/468/120-B of the Indian Penal Code against the petitioner as well as the co-accused Satya Narayan Bahidar. The learned J.M.F.C., Kantabanji on receipt of such charge sheet, after going through the case records has been pleased to take cognizance of the offences under sections 420/468/120-B of the Indian Penal Code which is impugned in this application under section 482 Cr.P.C.

5. While challenging the impugned order, it is contended that the petitioner under a bonafide belief accepted the letter No. 6655 dated 23.04.2002 to have been issued by the Office of the Collector which was produced by the co-accused Satyanarayan Bahidar and accordingly, issued the cheque. He further submits that there is absolutely no material on record regarding criminal conspiracy with the co-accused and therefore, the Investigating Officer was not justified in submitting charge sheet against the petitioner and the learned Magistrate has passed the impugned order in a mechanical manner without application of mind. It is further contended that since the petitioner was performing his official duty and he was a public servant, without sanction for prosecution, the order of taking cognizance is vitiated in the eye of law.

6. Learned counsel for the State supported the impugned order.

7. Considering the submissions made by the learned counsels for the respective parties and on going through the materials available on record, it appears that the letter was produced by the co-accused before the petitioner and without verification of the connected documents regarding the actual execution of the work, the petitioner made payment and during course of investigation, the forged letter along with admitted hand writing and specimen signatures were sent to the SFSL, Rasulgarh, Bhubaneswar for comparison and expert opinion and after receipt of the opinion and finding prima facie case against the petitioner and the co-accused Satyanarayan Bahidar, charge sheet was submitted. Therefore, it cannot be said that the charge sheet has been submitted without any material.

8. So far as the sanction aspect is concerned, the law is well settled as held in case of Sarat Chandra Dehury -Vrs.- Sankirtan Behera reported in 1989(1) Orissa Law Reviews 321, that the act of misappropriation or criminal breach of trust of Gram Panchayat fund cannot be held to have been done while the Sarpanch acts or purports to act in the discharge of his official duty. Criminal misappropriation and criminal breach of trust are offences of purely personal character unconnected with any official duty. Therefore, prior sanction of the Govt. U/s. 197 of the Code for the prosecution of the accused for commission of offences U/

s.409 and 420 of the Indian Penal Code was not necessary.

9. In case of Iswar Chandra Behera -Vrs-. State of Orissa reported in (2003) 25 Orissa Criminal Reports 36, it is held that preparing false records and making false endorsement in Govt. records as alleged by the prosecution cannot come within the purview of due discharge of official duty and therefore, no sanction under Section 197 Cr.P.C. is necessary.

10. In view of the aforesaid proposition of law, when the allegation is that the petitioner conspired with the co-accused and acted upon a forged letter and without verification of relevant documents made payment for the fourteen numbers of ring wells, therefore, there is no necessity of obtaining sanction for prosecuting the petitioner. Moreover, the report of the learned J.M.F.C., Kantabanji dated 04.05.2017 indicates that out of 17 chargesheet witnesses, 13 witnesses have already been examined during trial. Therefore, at this stage, I am not inclined to invoke my inherent power under section 482 Cr.P.C. to quash the impugned order.

11. Accordingly, the CRLMC application being devoid of merit stands dismissed.