

(2008) 10 OHC CK 0010
In the Orissa High Court
Case No : Criminal Rev. No. 1452 of 2007

Buni ' Murali Barik and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 01-10-2008

Acts Referred:

Arms Act, 1959 — Section 25, 27
Criminal Procedure Code, 1973 (CrPC) — Section 225, 227, 228, 229, 230
Explosives Act, 1884 — Section 9
Penal Code, 1860 (IPC) — Section 147, 148, 149, 286, 294

Citation : (2008) 10 OHC CK 0010

Hon'ble Judges : Pradip Mohanty, J

Bench : Single Bench

Advocate : D.N. Mishra, S.K. Swain and D.S. Mihra, for the Appellant; B. Mohanty, S. Das, G. Tripathy and S. Patanayak, for the Respondent

Final Decision : Dismissed

Judgement

Pradip Mohanty, J.—In this revision, the Petitioners call in question correctness of the order 14.11.2007 passed by the Learned Second Addl. Sessions Judge, Puri in S.T. No. 44/158 of 2007/2005, S.T. No. 45/221 of 2007/2006 and S.T. No. 46/131 of 2007 rejecting their application for discharge.

2. The Petitioners are some of the accused persons in the above noted S.T. cases. Initially, the Petitioners and 12 other accused persons were charged under Sections 147, 148, 323, 324, 325, 326, 294, 286, 354, 307, 302 and 149 Indian Penal Code read with Section 9(b) of the Indian Explosive Act and Section 27 of the Arms Act. But, on the basis of a petition filed by the prosecution, the Trial Court by order 04.10.2007, after hearing both parties and on consideration of materials available on record, altered the charge and those 12 accused persons were charged u/s 302 Indian Penal Code and Sections 147/148/307/323/149 and 354/149 Indian Penal Code read with Sections 25 and 27 of the Arms Act and Section 9(b) of the Indian Explosive Act. The charges against other accused persons remained the same. The Petitioners filed a petition u/s 227 Code of

Criminal Procedure. to discharge them on the grounds mentioned therein. But the Learned Second Additional Sessions Judge, Puri after hearing the parties rejected the said petition on 14.11.2007.

3. Mr. Mishra, Learned Counsel for the Petitioners submits that as per the F.I.R., out of 81 accused persons, specific allegation exists only against four accused persons. There is no material to proceed against the other accused persons. Out of village enmity, the F.I.R. has been lodged against the accused persons, although there is no iota of evidence against them. Therefore, in pursuing the trial against such accused persons against whom there is no evidence, not only tremendous amount of public time and money would be spent but there would also be no end result inasmuch as the trial against such accused persons is bound to end in acquittal. But the Trial Court instead of considering this aspect of the matter, rejected the application for discharge holding it to be without any merit.

4. Mr. Pattnaik, Learned Additional Government Advocate vehemently contends that charge was framed in 2006 and was altered against 12 accused persons on 4.10.2007. Those 12 accused persons are not the Petitioners here. Moreover, nine witnesses have already been examined by the prosecution. Therefore, the Trial Court has rightly rejected the application, which was filed in the midst of hearing, by assigning reasons.

5. Mr. Mohanty, Learned Counsel appearing for the informant also supports the above contention and submits that there is no scope for the Trial Court to entertain an application u/s 227 Code of Criminal Procedure. for discharge in the midst of the trial as the Code of Criminal Procedure does not recognize the same. He also submits that the present petition, so far as it relates to Petitioners No. 21, 41 and 47 is not maintainable since one Criminal Revision had been preferred by them challenging the rejection of such discharge petition, which was subsequently withdrawn. Successive revisions challenging the self-same order are not maintainable in the eye of law.

6. Learned Counsel for the parties, In support of their contentions, relied upon the decision in Kanti Bhadra Shah and Another Vs. The State of West Bengal, , Smt. Om Wati and Another Vs. State, through Delhi Admn. and Others, , Soma Chakravarty Vs. State through CBI, , Pradeep Kumar @ Pradeep Kumar Verma Vs. State of Bihar and Another, , Deelip Singh @ Dilip Kumar Vs. State of Bihar, , Union of India v. Prafulla Kumar Samal AIR 1979 SC 866 , K.P. Raghavan and Another Vs. M.H. Abbas and Another, , Almohan Das and Others Vs. State of West Bengal, .

7. Perused the records of this case and Criminal Revision No. 519 of 2006, written notes of argument filed by the respective parties and the decisions cited on their behalf. The crux of the case is, whether successive discharge applications are maintainable and whether during the midst of the trial, the Trial Court can consider the application u/s 227 Code of Criminal Procedure. for

discharge of the accused persons. Admittedly, in the instant case, charge was framed in the year 2006. A petition for discharge was filed, which came to be disposed of on 12.07.2006. Against that order, three of the accused persons preferred CRLREV No. 519 of 2006, which was not pressed and dismissed as such on 03.01.2008. Those three accused persons are Petitioners in the present revision. The charge was altered on 04.10.2007 by the Trial Court against 12 accused persons, but they are not the Petitioners in this revision. After examination of nine witnesses, another petition u/s 227. Code of Criminal Procedure. was filed before the Trial Court. The said petition was considered and rejected by the Trial Court by the impugned order with the finding that in the midst of the trial, it cannot be said that the accused persons are innocent or were not the members of the unlawful assembly and that there is no sufficient ground to proceed with the trial. Law is well settled that at the stage of framing of charge, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. In other words, at that stage, the Trial Court, upon consideration of police report and other documents and after hearing both sides, is to form an opinion that there is ground for presuming that the accused has committed the offence.

8. Chapter XVIII of the Code of Criminal Procedure prescribes the mode of trial before a Court of session. It begins with Section 225 and ends with Section 235, and the Court is required to comply with the provisions one after another. The provision for discharge has been prescribed in Section 227, i.e., prior to framing of charge. An order of discharge can be passed if upon consideration of the records of the case and the documents submitted therewith and after hearing the submissions of the parties, the Court considers that there is no sufficient ground for proceeding against the accused. On the other hand, if it finds sufficient grounds to proceed against the accused, it shall frame charge u/s 228. Once charge is framed, the Court cannot revert back to Section 227. It has to proceed with the case and record an order of conviction upon plea of guilty u/s 229, or else fix a date for prosecution case u/s 230 and record prosecution evidence u/s 231. If after taking the evidence for the prosecution, examining the accused and hearing the parties on the point, the Court considers that there is no evidence that the accused committed the offence, it shall record an order of acquittal u/s 232. If the accused is not acquitted u/s 232, the Court shall call upon him to enter on his defense u/s 233, hear arguments u/s 234 and finally pass the Judgment, either acquitting or convicting the accused, u/s 235. Thus, in order to ensure an uninterrupted and expeditious trial, the Parliament in its wisdom has restrained itself from making any provision for discharge in between Sections 228 and 232 Code of Criminal Procedure., i.e., in between framing of charge and recording an order of acquittal. That is the reason for which the provision for discharge has been prescribed in Section 227 Code of Criminal Procedure., i.e., prior to framing of charge.

9. From a reading of Section 232 Code of Criminal Procedure. it is crystal clear that if after taking the evidence for prosecution and examination of the accused

and hearing the prosecution and the defense, the Trial Court considers that there is no evidence, then it shall record an order of acquittal, otherwise it shall proceed with the case.

10. In the instant case, admittedly the petition was filed after examination of 9 witnesses. Therefore, the Trial Court has rightly rejected the same, as the Code of Criminal Procedure does not provide for filing of such an application in the midst of trial of a Sessions case.

11. The facts of the present case are different from those of the decisions cited by the party's inasmuch as in the reported cases, the application u/s 227 Code of Criminal Procedure. was filed either before or at the time of framing charge and not in the midst of the trial, as has been done in this case. Therefore, the decisions are not applicable to the present case.

12. In view of the above this Court does not find any illegality or irregularity to have been committed by the Trial Court in rejecting the application u/s 227 Code of Criminal Procedure. in the midst of the trial. The CRIREV has no merit and is dismissed as such.