

(1971) 12 OHC CK 0004

In the Orissa High Court

Case No : Criminal Revision No. 569 of 1971

D. Bhubanmohan Patnaik and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 10-12-1971

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 153A, 173(2), 196, 199, 207A
Explosive Substances Act, 1908 — Section 4, 5
Penal Code, 1860 (IPC) — Section 120B, 153A, 399, 505(1), 53A

Citation : (1972) 38 CLT 50

Hon'ble Judges : R.N. Misra, J

Bench : Single Bench

Advocate : Party in Person, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.N. Misra, J.—The four Petitioners along with seven others have been committed by the S.D.M. Jeypore to stand their trial in the Court of sessions for offences punishable under Sections 120-B/399, Indian Penal Code and u/s 4 of the Explosive Substance Act, 1908. The Petitioner No. 1 has also been committed to stand trial for the offence punishable u/s 153-A, Indian Penal Code. This petition from jail by the four Petitioners asks for quashing of the commitment order.

2. The Petitioner No. 1 had indicated his desire to be heard personally in support of the petition and stated that he would place the case of all the four Petitioners. Under orders of this Court he was brought up from the jail and was produced before the Court. He argued in support of the petition and the learned Standing Counsel was heard on behalf of the State.

3. The charge-sheet in this case was submitted on 23-04-1970. Therein the offences said to have been committed by the accused persons were stated to be Sections 120-B/153-A/505(1)(b) & (C), Indian Penal Code. Subsequently a supplementary charge-sheet was sent up on 25-5-1970. The offences indicated there in were those punishable under Sections 120-B and 399, Indian Penal Code

and Section 5 of the Explosive Substance Act. After the committal enquiry the learned Magistrate has committed these Petitioners in the manner indicated above.

4. The Petitioner No. 1 contends that the order commitment is bad on the following grounds:

(1) There is no provision for a supplementary charge-sheet in law except what is provided u/s 173(2), Code of Criminal Procedure. As the prosecution has not established by evidence that there was scope in this case for a supplementary charge-sheet, the supplementary charge-sheet must be ignored;

(2) The allegations disclosed in this case are such that there must have been a complaint as required under the law for the prosecution and not a police report. Therefore, the commitment proceeding should have been as applicable to 8 case on 8 complaint other than a police report;

(3) The material on record shows that the investigation commenced first and thereafter came the F.I.R. That has prejudiced the Petitioners;

(4) There is absolutely no evidence to justify the commitment and as such the commitment must be quashed;

(5) The evidence of p.ws. 2, 3, 5 and (sic) (approver) in support of the allegations leading to the offence u/s 399, Indian Penal Code came from witnesses being aware of the intention of the accused persons committing the offence punishable u/s 399, Indian Penal Code had not disclosed the same to the proper authorities, and as such in view of the provisions of Section 44, Code of Criminal Procedure their evidence must be taken to be tainted.

(6) The sanction for the offence u/s 53-A, Indian Penal Code was given by the District Magistrate subsequent to the cognizance and as such cannot avail the prosecution.

5. The Petitioners did not challenge their commitment for the offence punishable u/s 4 of the Explosive Substance Act of 1908. Similarly the learned Standing Counsel fairly concedes that the sanction given by the District Magistrate subsequent to the cognizance being taken in respect of the offence u/s 153-A, Indian Penal Code cannot be valid. Sanction is a condition precedent to taking of cognizance. I think the concession of the learned Standing Counsel is fair and in keeping with the law. Their Lordships of the Supreme Court in Baijnath Gupta and Others Vs. The State of Madhya Pradesh, , in paragraph 4 of their judgment have clearly supported such a view. In view of the concession of learned Standing Counsel the commitment of the Petitioner No. 1 to stand trial for the offence u/s 153-A, Indian Penal Code must be quashed as being not supported by sanction as a condition precedent.

6. Thus the only question to be examined at length is about the commitment in relation to offence punishable under Sections 120-B and 399, Indian Penal Code.

It is contended for the Petitioners that the entire preparation for committing decoity in this case is referable to what was disclosed at a meeting held in the Balimela Project area. There it is alleged that speeches were made to the effect that the present Government should be overthrown and a new order should be established. In view of such allegations by the prosecution the Petitioners contend that the offence is really one covered by Chapter VI of the Indian Penal Code and, therefore, Section 196, Code of Criminal Procedure is applicable and complaint should have been made by the State Government or the appropriate authority as prescribed in the Code. On the other hand, the learned Standing Counsel contends that the allegations made by the prosecution clearly bring the matter under Sections 120-B and 399, Indian Penal Code and, therefore, no sanction is necessary, nor does Section 199 or 153-A. Code of Criminal Procedure apply to the facts of this case. Money of the contentions of the Petitioners are built on this basis that it is really so case which should have proceeded on the basis of a complaint and the commitment proceeding should have also been enquired into on the footing that it was a case instituted otherwise than on a police report. I do not find much substance in this contention of the Petitioners. The evidence as led in the committing Court really goes to show that the offences alleged to have been committed come within the purview of Sections 120-B and 399, Indian Penal Code. The Petitioner No. 1 concedes that if these are the two offences prima facie made out, then certainly no sanction is necessary and on the basis of a police charge-sheet the case can be sent up for trial to the Court of sessions. It would, therefore, follow that the charge-sheet is an order and the commitment proceeding on such score cannot be quashed. The order of commitment, therefore cannot be challenged on this count.

7. The next ground is that the order of commitment is based upon no evidence. Reliance is placed by the Petitioner in *Almohan Das and Others Vs. State of West Bengal*, , to contend that it is a fit case where the order of commitment should be quashed. In the aforesaid decision their Lordships of the Supreme Court stated,

Normally the High Court in a revision application filed against the order of commitment u/s 207-A will not enter upon a reappraisal of the evidence on which the order of commitment is made. The High Court would be justified in exercising its revisional jurisdiction where & substantial question of law arises on which the correctness of the order of commitment may be effectively challenged where there is no evidence on which the order of commitment could be made, where there has been denial of a right to fair trial, where there is reason to think because of failure to comply with the rules of procedure or conditions precedent to initiation of criminal proceedings, where by ignoring the substantive law which constitutes the offence or misconception of evidence on matters of importance grave injustice has resulted, and on similar other grounds. But in other cases, interference with the order of the Magistrate committing the accused for trial may not be justified and the trial) before the Court of Session should be allowed to run its course.

Both sides agreed that the main evidence in support of the prosecution case comes from p.w.s. 2, 3, 5 and 10 the last one being the approver. I have scrutinised the evidence with great care and I find that these witnesses have supported the prosecution case at least for the purposes of finding out a prima facie case for commitment. What their evidence at the trial would be and what ultimate contribution their evidence would make to the prosecution case in the trial itself is another matter. But as the evidence now stands, it cannot be said that it is worthless and no Court would at all accept such evidence. Remembering the dictum said down by their Lordships of the Supreme Court I think this is a case which should be allowed to run its own course and there should be no interference with the commitment at this stage on this score. There is prima facie evidence to implicate the Petitioners for the offences alleged.

8. The committing Magistrate is not entitled to assess the evidence and on an appreciation of such evidence come to a conclusion. Their Lordships in the Supreme Court in a later case in Shaikh Alimuddin Ahmed Vs. State of West Bengal, interfered with a commitment order because on the analysis of the evidence they came to find that there was not an iota of evidence in support of the prosecution case. Even if the entire evidence recorded before the committing Magistrate was accepted they came to hold that there could be no conviction at the trial. It is exactly how their Lordships have said,

This evidence, without any attempt to appreciate or weigh it, to determine whether it is believable or not, does not in any way implicate either of the Appellants.

In the present case, however, the evidence cannot be disputed to be as worthless as in the aforesaid case.

9. The next contention is in relation to the evidence of the prosecution witnesses who participated in the meeting held in the "Mandia" god own where actually some of the accused persons delivered speeches disclosing some elements of the offence. It is true some Courts have taken the view that the evidence of a person who is aware of the intention of certain persons to commit an offence and does not disclose it to indicate cannot be relied upon without independent corroboration in material particulars see Nawab v. Crown Emperor v. Kallu and Anna v. Hyderabad State. This however, cannot lead me to hold that the evidence has to be discarded. For conviction of the accused persons it may be that corroboration in material particulars may have to be looked for. At the trial the prosecution may provide the corroborating material in case such corroboration is necessary in law. I do not propose to decide this aspect of the matter now because in my view that would be transgressing the limit of the committing Court's powers.

10. In view of what I have said above it would follow that this criminal revision has to succeed in part. The commitment order in relation to the Petitioner No. 1 for the offence u/s 153-A, Indian Penal Code would stand vacated. There would

be no further interference with the order of commitment and the learned Sessions Judge would now proceed with the trial.