
(1991) 05 OHC CK 0011

In the Orissa High Court

Case No : Criminal Revision No. 211 of 1991

Dhaneswar Mallik and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 10-05-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164

Citation : (1992) CriLJ 1711 : (1991) 2 OLR 68

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : G.N. Mohapatra and A.K. Mohapatra, for the Appellant; Debasis Das, A.S.C. (for O.P. No. 1), for the Respondent

Final Decision : Dismissed

Judgement

S.C. Mohapatra, J.—A case rare in its nature having come to notice in this revision, the same is disposed of with reasons at the stage of admission.

2. Champabati lodged information in Jajpur Road Police-station that Dharanidhar (accused) and others kidnapped her daughter Kumari Minati on 5-9-1989 at about 10 A. M. in a car and at the time of interception by her two sons Padmalochan and Trilochan, they were threatened of assault by accused persons Registering it as First Information Report, police conducted investigation. In course of investigation, petitioners were examined and their statements were recorded u/s 161, Cr. P. C. From these statements it is revealed that petitioners were witnesses to occurrence. Charge-sheet having been filed against five accused persons, petitioners filed an application before learned Judicial Magistrate to record their statements u/s 164, Cr. P. C., since they did not implicate accused Jitendra to have participated in the crime and investigating officer with mala fide and ulterior motive mentioned in their statements about involvement of Jitendra.

3. From the impugned order it is seen that at instance of investigating officer

statements of four witnesses including that of the victim girl have already been recorded u/s 164, Cr. P. C. Learned Magistrate exercised his discretion not to accept the prayer which is grievance of petitioners.

4. Mr. G. N. Mohapatra, learned counsel for the petitioners relied upon the decision reported in 47 (1979) CLT 298 (State of Orissa v. Amitava Prasad Das) and admitted that learned Magistrate ought to have exercised his discretion to record statements of petitioners u/s 164, Cr. P. C.

5. Language of Section 164, Cr. P. C, makes it clear that a Judicial Magistrate is not bound by law to record statements u/s 164, Cr. P. C. whether he would record such statement is a matter of discretion and duty and not of obligation. State of Uttar Pradesh Vs. Singhara Singh and Others, , it was observed:

"...Guide clearly the power conferred u/s 164 to . record a statement of confession is not one which must be exercised....."

6. In (1979) CLT 298 (supra), Sessions judge directed Magistrate to record a statement u/s 164, Cr. P. C. This Court did not interfere with the same. It relied upon observation fn a decision of Madras High Court reported in AIR 1948 Mad. 489 (In re C, W. case) which reads as follows :

"...There may be instances where the police may not desire to have recorded, the statement of a witness for some reason or other. In such a case, there is nothing preventing the witness to go to the Magistrate and request him to record the statement and if a Magistrate records his statement and transmits the same to the Court where the enquiry or the trial is to go on, there is nothing wrong to his action. ..."

7. Sec, 164, Cr. P. C is in furtherance of a fair trial or enquiry. Where a Judicial Magistrate would be of the opinion that a statement u/s 164, Cr. P. C. would advance cause of fair enquiry or trial it can exercise the discretion to record the statement of a witness. If discretion is not exercised in favour of recording, revisional Court may interfere if it finds that learned Magistrate has not been able to appreciate effect of the statement to be recorded in the enquiry or trial. Where, however, refusal to record a statement would not in any manner affect the enquiry or trial, revisional Court should not entertain the application for revision which would have the effect of delaying the enquiry or trial.

8. In this case, petitioners can explain their statements u/s 161, Cr. P. C , if they are examined as witnesses. At the time of appreciation of evidence. Court can consider whether Investigating Officer has wrongly recorded something which was not stated by petitioners. Refusal to record statements u/s 164, Cr. P. C. does not affect fair trial in any manner. Learned Magistrate is justified in refusing the application.

9. In the result, there is no merit in this revision which is dismissed.