
(2009) 04 OHC CK 0082
In the Orissa High Court
Case No : CRLREV No. 540 of 2007

Dibakar Bhoi

APPELLANT

Vs

Bhoianath Rout and Others

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 226, 227, 482, 91
Penal Code, 1860 (IPC) — Section 120B, 167, 218, 34, 466

Citation : (2009) CLT 1085 (Suppl CrI)

Hon'ble Judges : Pradip Mohanty, J

Bench : Single Bench

Advocate : S. Mishra and Aparesh Bhoi, for the Appellant; Addl. Standing Counsel for O.P. No. 10, for the Respondent

Final Decision : Dismissed

Judgement

Pradip Mohanty, J.—This Revision is directed against the order dated 17.04.2007 passed by learned S.D.J.M., Baripada in I.C.C. No. 45 of 2007 refusing to issue search warrant u/s 91 of the Code of Criminal Procedure for production of documents.

2. The brief facts of the case are that the Petitioner/complainant filed a complaint case registered as I.C.C. Case No. 45 of 2007 against the opposite parties under Sections 167/218/466/120-B/34 I.P.C. before the learned S.D.J.M., Baripada, who recorded initial statement on 13.04.2007. Thereafter, the Petitioner filed a petition u/s 91 Code of Criminal Procedure for production of Birth Register alleged to have been forged. In the said petition, the Petitioner prayed for the attendance of the opposite parties/accused persons and production of the entire Birth Register. The learned S.D.J.M. after hearing the Petitioner, rejected the application on 17.04.2007 on the ground that since there was no material before the court to infer that there had been manipulation in the Birth Register, there was no necessity to issue search warrant and it was not proper to direct production of the Register at that stage of the case.

3. Learned Counsel for the Petitioner assailed the impugned order on the ground that the learned S.D.J.M. without applying his judicial mind, illegally rejected the application. She submitted that production of the documents is very much necessary for enquiry u/s 202 Code of Criminal Procedure she also submitted that if the police in course of investigation into an offence on the information of the complainant resorts to exercise of power u/s 91 Code of Criminal Procedure for seizure, there is no reason as to why a private complainant should be debarred to invoke that right at the stage of enquiry, i.e., before cognizance. She further submitted that the observations made by the Magistrate appear to be improper. At the stage of taking cognizance, the learned S.D.J.M. is required to have a prima facie view of the matter after considering the statement recorded and the documents produced. Therefore, rejection of the application for production of the Birth Register is erroneous.

4. Learned Counsel for the State submitted that this revision is not maintainable as it arises out of an interlocutory order Either an application u/s 482 Code of Criminal Procedure or a Writ Petition u/s 226 and 227 will lie against such an order. In this connection he draws the attention of the court to the decision in R.S. Raghunath Vs. State of Karnataka and another,

5. Perused the record. In the instant case, admittedly after recording of initial statement and before an enquiry u/s 202 Code of Criminal Procedure, a petition was filed for attendance of the accused persons and production of the Birth Register. At the stage of pre-cognizance roving and fishing inquiry is impermissible. If the initial deposition and the documents produced by the complainant and statement witnesses u/s 202 Code of Criminal Procedure disclose a prima facie case against the accused persons and the ingredients of the offence are fulfilled and the court is prima facie satisfied about the same, it may take cognizance. In so far as the complainant is concerned, his entitlement to seek an order u/s 91, Code of Criminal Procedure would ordinarily not come till the stage of cognizance. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such prayer for summoning and production is made. u/s 91 Code of Criminal Procedure summons for production of document can be issued by the Court and under a written order an officer-in-charge of the Police Station can also direct production thereof. Section 91 does not confer any right on the complainant to produce the document in his possession before cognizance. In the instant case, the documents have been collected under the Right to Information Act and produced before the learned S.D.J.M., Baripada. Admittedly, there is no material to hold that there was manipulation by the accused and attempt has been made to change the date of birth. Besides, this register has been maintained in the due discharge of official duty.

6. In view of the above, it cannot be said that any illegality has been committed by the learned S.D.J.M., Baripada since at the stage of 202 Code of Criminal

Procedure enquiry, in other words, before taking cognizance, roving and fishing enquiry is impermissible. If the contention of the Petitioner/complainant for production of the document in question is accepted, that would mean to hold a trial before taking cognizance. Therefore, the said petition was rightly rejected. Moreover, this revision is not maintainable since the order impugned is not a final one. However, it is open to the trial court if necessary can call for the documents at appropriate stage.

7. In the result, the CRLREV is dismissed.