
(2007) 08 OHC CK 0003
In the Orissa High Court

Gangadhar Behera and Another

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 173, 190, 200, 202

Citation : (2008) 2 BC 682 : (2008) CLT 79 (Suppl CrI) : (2008) CLT 58 (Suppl CrI) : (2008) CriLJ 839 : (2007) 2 OLR 223 Supp

Hon'ble Judges : Pradip Mohanty, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pradip Mohanty, J.—In this revision, the petitioners call in question the legality of the order dated 17-4-2006 passed in C.T. Case No. 693 of 2006/I.C.C. Case No. 48 of 2006 whereby the learned S.D.J.M. Angul has directed the O.I.C., Angul P.S. for investigation of the case u/s 156(3), Cr. P.C. and to submit final form within a stipulated date.

2. Brief facts of the case are that opposite party No. 2, as complainant, instituted a complaint case against the present petitioners before the learned S.D.J.M., Angul, which was registered as I.C.C. Case No. 48 of 2006. The complainant runs a workshop, i.e., a manufacturing unit of gold ornaments in the name and style "Sudarshan Alankar". The accused persons, petitioners herein, are well known to him since long. They have a similar workshop, namely, "Rajeswari Alankar" at village Kumanda of Angul. Petitioner No. 1 has also another business unit, namely, "Durga Alankar" near College Square, Angul. It is alleged that on 28-12-2005, the accused-petitioner No. 1 came to the shop of the complainant and requested him to give an amount of Rs. 1,50,000/- on credit for developmental work of his workshop "Durga Alankar". On that day, i.e., 28-12-2005, the accused-petitioner No. 1 took on credit a sum of Rs. 1,50,000/- in the shape of cash by executing an agreement in presence of the witnesses to the effect that in the event of failure to repay the loan amount on or before

28-1-2006, he will execute a registered sale deed of his residential plot and house situated at village Kumanda in favour of the complainant. As accused-petitioner No. 1 did not repay the loan by the due date, the complainant on 29-1-2006 met the latter and approached him to repay the loan but he avoided paying the same. On 11-4-2006 at about 4.00 P.M. both the petitioners while passing by a motorcycle met the complainant on the road near Hata Chhaka, Angul. Petitioner No. 1, who was driving the motorcycle, parked the same on the left side of the road. Thereafter, both the accused-petitioners came to the complainant and abused him in filthy language and brutally assaulted him with kick and fist blows. Petitioner No. 1 pressed the neck of the complainant and petitioner No. 2 gave two blows on his belly. The complainant shouted for help, hearing which the witnesses rushed to the spot and saved the life of the complainant. It is also alleged that both petitioners 1 and 2 had made a criminal conspiracy to grab the money from the complainant. They also committed breach of trust. The complaint petition was presented on 12-4-2006 and by order dated 17-4-2006 the learned S.D.J.M. sent the complaint to O.I.C., Angul P.S. for investigation u/s 156(3), Cr.P.C. and to submit final form.

3. Learned Counsel for the petitioners submits that the learned S.D.J.M. has committed grave illegality in sending the complaint to the police for investigation u/s 156(3), Cr.P.C. Once the learned Magistrate proceeded for conducting enquiry u/s 200, Cr.P.C. for recording initial statement, he should not have taken recourse to Section 156(3). She further submits that any order for enquiry or investigation by the police after proceeding u/s 200, Cr.P.C. and deciding to record initial statement could only be done u/s 202, Cr.P.C. and not u/s 156(3), Cr.P.C. the implications and ramifications of an investigation under the two provisions are vastly different. In support of her contention, learned Counsel relies on H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh), , Babu alias Badal Das, etc. v. State of Orissa (1997) 12 OCR 314; and Sudhansu Parida Vs. State of Orissa and Another,

4. Learned Counsel for opposite party No. 2 submits that the learned S.D.J.M. has not committed any illegality by passing the impugned order. The power to order police investigation u/s 156(3), Cr.P.C. is different from the power to direct investigation conferred by Section 202(1), Cr.P.C. The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage and the second at the post-cognizance stage when the Magistrate is in seisin of the case. The power u/s 156(3), Cr.P.C. can be invoked by the Magistrate before he takes cognizance of the offence u/s 190(1)(a). Once he takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It is apparently clear from the order of the Magistrate that he has not applied his mind to the case, nor has he collected evidence from any source; rather, he has directed the police to exercise its power u/s 156(1), Cr.P.C. to cause investigation of the allegations made and furnish a report. Therefore, no fault can be found

with the impugned order. In support of his contentions, learned Counsel places reliance on Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, , Tula Ram and Others Vs. Kishore Singh, and Kapila Type Foundry Vs. Cuttack Type Foundry and Others,

5. Perused the order dated 17-4-2006 and the decisions cited by the respective parties. By the impugned order, the learned Magistrate has directed the O.I.C., Angul for investigation and submission of final form. Section 156, Cr.P.C. deals with police officer's power to investigate cognizable cases and Sub-section (3) thereof envisages that any Magistrate empowered u/s 190, Cr.P.C. may order such an investigation. For ready reference, Sections 156 and 190, Cr.P.C. are quoted hereunder:

156. Police officer's power to investigate cognizable cases.- (1) any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one, which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered u/s 190 may order such an investigation as above-mentioned.

190. Cognizance of offences by Magistrates.- (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under Sub-section (2), may take cognizance of any offence:

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed;

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under Sub-section (1) of such offences as are within his competence to inquire into or try.

6. From the bare reading of the above two provisions, it is crystal clear that the power u/s 156(3) can be invoked by a Magistrate before he takes cognizance. But if he takes such cognizance, he is not competent to switch back to the pre-cognizance stage as provided u/s 156(3). The order made under Sub-section (3) of Section 156 is in the nature of intimation to the police to exercise their plenary powers of investigation u/s 156(1). Such an investigation embraces the entire process which begins with the collection of evidence u/s 156 and ends with a report u/s 173, Cr. P.C. That means, the Magistrate has not applied his mind nor

as he collected any evidence from any source. Rather, he has directed the police to exercise their plenary power u/s 156(1) to cause investigation on the allegations made and furnish a report u/s 173, Cr.P.C. The report may be either by way of charge-sheet or final report. After receiving the same, the Magistrate can apply his judicial mind. That apart, the impugned order is definitely before taking cognisance and is not in nature of final order. It is the settled principle of law that no revision will lie against an interlocutory order. Since it is not a final order, the criminal revision is not maintainable.

For the reasons stated above, the revision stands dismissed.