

(1988) 03 OHC CK 0022

In the Orissa High Court

Girish Chandra Patra and Others

APPELLANT

Vs

Pinakee Enterprisers Pvt. Ltd.

RESPONDENT

Date of Decision : 21-03-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 202, 482
Penal Code, 1860 (IPC) — Section 167, 21, 34

Citation : (1988) 66 CLT 189 : (1989) CriLJ 527 : (1988) 1 OCR 234

Hon'ble Judges : D.P. Mohapatra, J

Bench : Single Bench

Judgement

D.P. Mohapatra, J.—In this petition u/s 482. Criminal Procedure Code (for short the "Code"), the petitioners Officers of the Orissa State Financial Corporation (for short the "Corporation"), seek to quash the proceeding in the Criminal Case. ICC No. 246 of 1484 pending before the Chief Judl. Magistrate, Cuttack. In the said case the petitioners have been charged u/s 167/34 Indian Penal Code.

2. The proceeding was initiated on the complaint filed by the opposite party, a private Limited Company represented by its Chairman, Narsingh Prasad Chaudhury, alleging, interalia, that in response to the call of the State Government to provide financial assistance for small and medium scale industries, the Managing Director of the Company, then as unemployed graduate, was tempted to avail of the opportunity and wanted to start an industry for cold storage of potato at village Urali near Cuttack city. He approached the Corporation, the premier financing agency in the State, for financial assistance. The requisite paraphernalia like registration with the District Industries Centre. Cuttack and obtaining a feasibility report from OR ITCO. Bhubaneswar through Orissa Small Industries Corporation, Cuttack were complied On the basis of the feasibility report, the complainant applied to the Corporation for a loan of Rs. 30 lacs. The petitioner 1, then the , Managing Director of the Corporation forwarded the same to the District Branch for due processing. The petitioner 2, Rabindranath Panigrahi who was then the Branch Manager of the District Branch, on being satisfied about the project and the site recommended the application for

loan to the Head Office. Then the complainant received intimation from the Head Office to arrange financier to provide working capital. It is further alleged that the petitioner 1 addressed a letter to the complainant stating that Rs. 24,00,000/- was sanctioned in his favour for construction of the said storage at Urali. On the request of the complainant the Andhra Bank agreed to provide working capital and a tripartite agreement was entered into between accused 3, Sri T. M. Sahani. representing the Corporation, the Manager Andhra Bank and the Chairman of the complainant-company. At the instance of petitioner 2 to float a company in place of a partnership firm the complainant-company came into existence. Thereafter the loan application was placed before the Board in which the petitioners 1 to 3 played a prominent role. Then the Board sanctioned a term loan of Rs. 22,47,000/- and imposed two conditions, i.e., to widen the approach road and to get the unit insured for natural calculation, such as flood, cyclone, earthquake and etc. in its meeting held in October 1982. The said decision was communicated to the complainant by the letter of the Corporation dated 23-10-82. The complainant made some constructions at the site and also took steps to get a clearance certificate from the Sales Tax and Income Tax Departments as per instruction of the Corporation. It is also averred in the complaint petition that at this stage the accused persons having conspired with each other to sabotage the project have deliberately prepared a false and concocted report to be submitted to the General Manager (Chairman) and indeed submitted such a report recommending therein to cancel the sanctioned order issued in favour of the company. Thereafter in August, 1984 the complainant learnt that accused 2 and 3 gave a false and concocted report contrary to the existing facts to sabotage the unit. They completely went back on the earlier reports regarding suitability of the site for setting up the industry. The complainant further alleged that due to the aforesaid actions of the accused persons, he sustained a loss of more than rupees 4 lacs besides sufferings, mentally and financially,

3. On receiving the complaint petition the learned magistrate held inquiry u/s 202 of the Code. In course of the said inquiry, one Satis Chandra Das was examined as a witness in support of the allegations made in the complaint petition. Some documents were also filed by the complainant. On perusal of the materials on record, the learned Chief Judl. Magistrate was satisfied that a prima facie case u/s 167/34 I.P.C. was made out against the accused persons. It appears from the order-sheet that the contention was repeatedly raised that accused 1 (petitioner 1 in the present proceeding) an Officer of the Indian Administrative Service, was entitled to protection u/s 197 of the Code and the said contention was negatived by the learned Magistrate by orders dated 30-1-85 and 13-3-1986.

4. The case of the petitioners as stated in the application u/s 482 of the Code is that at no stage did the Corporation or its officers namely, the petitioners gave any commitment to the complainant company that the site was found suitable in all respects. Indeed, when intimation was sent to the company that a loan of Rs.

22,47,000/- had been sanctioned in principle, it was made subject to the general condition of the Corporation and it was specifically stated therein that the intimation does not constitute commitment on the part of the Corporation at that stage. On 31-12-82, R. N. Panigrahi, petitioner 2, and T. N. Sahani petitioner 3, the Technical Officer and Secretary respectively of the Corporation gave the report that the place was not suitable for establishment of a cold storage. The Board of Directors in its meeting held on 21-3-83 decided to cancel the offer and observed that the proposal would be reconsidered if the promoter changed the site to a suitable place. This decision was communicated to the complainant on 18-2-83. On the direction of the Secretary, Industries Department, who was also the Chairman of the Corporation and the Managing Director of Industrial Infrastructure Development Corporation, the petitioner 1 inspected the site and also gave a report reiterating the position that the site was not suitable for establishment of a cold storage. Thereafter the State Government in the Industries Department communicated to the Corporation that the project of the complainant should not be financed. The complainant challenged the decision of the Corporation regarding sanction of loan in a writ petition (O.J.C. No. 2795 of 1984) filed by the complainant company. In the said case this Court directed the Corporation to reconsider the matter. On reconsideration the Corporation reconfirmed its earlier decision and intimated the complainant by its letter dated 14-5-85. The complainant filed another writ petition (O.J.C. No. 1726 of 1985) in this Court . challenging the aforesaid decision of the Corporation. The accused persons moved the Sessions Judge, Cuttack against the order dated 30-1-85 of the Chief Judl. Magistrate noticed earlier. The revision was dismissed by the learned Sessions Judge by his order dated 13-3-87.

5. The learned Counsel for the petitioner has mainly raised two contentions : (1) that the averments made in the complaint petition on their face value do not make out a case u/s 167/34, I.P.C. against the petitioners; and (2) that the courts below clearly erred in holding that the petitioners were not entitled to protection u/s 197 of the Code.

6. Before dealing with the merits of the case, it will be helpful to consider the nature and scope of the inherent power of this Court u/s 482 of the Code. In this connection the principles which can said to be well accepted were laid down by the Supreme Court in the case of R.P. Kapur Vs. The State of Punjab, . In that case the Court considered the scope of the inherent power of the High Court u/s 561-A of the old Code. The Court observed thus:

...It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of

this inherent jurisdiction. However, we may indicate some categories of cases where the inherent; jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise, In cases falling under this category the allegations made against the accused persons do not constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction u/s 56-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not 8S sustained Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court u/s 561-A in the matter of quashing criminal proceedings and that is the effect of the judicial decisions on the point....

7. I have carefully perused the complaint petition and the materials produced by the complainant in the enquiry u/s 202 of the Code. It is expressly stated in the complaint petition, reiterated in the initial statement of the complainant and in the statement of the witness examined in the enquiry u/s 202 of the Code that the petitioners deliberately submitted the false report that the site was unsuitable for construction of a cold storage. On perusal of the complaint petition, it cannot be said that the allegations therein even if they are taken at their face value and accepted in their entirety, do not constitute the offence

alleged. It cannot also be said at this stage that there is no legal evidence adduced in the case to prove prima facie case in support of the charge. In dealing with this aspect, it is pertinent to bear in mind, as observed by the Supreme Court that this Court would not embark upon an enquiry as to whether the evidence on record is reliable or not. That is the function of the trial magistrate.

8. The other question to be considered relates to sanction Section 167, I.P.C. deals with an incorrect framing or translating of a document by a public servant the preparation or translation of which is within the scope of his official duty provided he knew of it and it was done with the intention or knowledge that it was likely to cause injury to any person. To sustain the charge the following facts are to be established:

- (1) That the accused was a public servant.
- (2) That he was entrusted with the preparation of a document.
- (3) That he framed or translated it in an incorrect manner.
- (4) That he did so knowingly.
- (5) That he did so with intent or knowledge that it was likely that he would thereby cause an injury.

The very nature of offence under the section indicates that the framing of the document by the accused alleged to be false has a nexus with his official duty as a public servant. In this case the allegations made in the complaint petition and the statements of the complainant and the witness and other materials produced during the enquiry, u/s 202 of the Code clearly shows that the petitioners (accused persons) were acting in course of their official duty in preparing the report alleged to be false. Therefore, the courts below erred in holding that the action of the accused persons complained of had no nexus with their official duty and therefore Section 197 of the Code was not applicable to the case.

9. The question that remains to be considered is whether all the petitioners are entitled to protection u/s 197(1) of the Code. There is no dispute that the petitioners are public servants as provided u/s 21(12)(b) of the I.P.C. But Section 197(1) of the Code applies only to such public servants as are not removable from office save by or with the sanction of the State Government or of the Central Government In other words, in order that the protection under the section may apply, the public servant must be removable from office only by or with the sanction of the State Government or the Central Government and not by any other authority. In the present case the petitioner Girish Chandra Patra is an Officer of the Indian administrative service, who was then functioning as the Managing Director of the Corporation. There can be little doubt that) he comes within the category of public servants envisaged u/s 197(1) of the Code. Regarding the other two petitioners who are officials of the Corporation, there is no material produced to show that they were public servants removable from the

office only by or with the sanction of the State Government or of the Central Government. In the absence of such materials, it cannot be said that they are also entitled to the protection u/s 197(1) of the Code.

10. In the ultimate analysis, the petition is allowed in part. The criminal proceeding in ICC No. 246 of 1984 is quashed so far as petitioner 1, Girish Chandra Patra is concerned. The prayer of the other two petitioners for quashing the proceeding in the said case is refused.