

(1969) 04 OHC CK 0004

In the Orissa High Court

Case No : Criminal Revision No. 45 of 1967

Gokhei Maharana and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 11-04-1969

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 144, 173, 173(4), 251(A)
Penal Code, 1860 (IPC) — Section 118, 147, 447

Citation : (1969) 35 CLT 590

Hon'ble Judges : Ray, J

Bench : Single Bench

Advocate : S. Misra and S.K. Mohanty, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Ray, J.—This revision is directed against the order of A.D.M. (Judicial), Cuttack, setting aside an order of discharge passed by Sri A.C. Das, Magistrate, and directing him to make further inquiry and to frame necessary charges, if evidence warranted it.

2. A few facts are necessary to be stated in order to understand the point involved in this Revision. One Naran Moharana lodged First Information Report against the Petitioner 27-1-1965. It contained various allegations. One of such allegation was that the accused persons violated an order passed u/s 144, Code of Criminal Procedure against them. The police on receipt of F.I.R. registered P.S. case No. 6 of 1965 and submitted charge-sheet under Sections 147, 447 and 118 Indian Penal Code. This case was numbered as G.R. Case No. 47 of 1965/119-T of 1965. This charge-sheet was submitted on) 19-3-1965. This case came up before Sri D. Naik, Magistrate, 1st Class, Cuttack, who ultimately discharged the accused u/s 251(A), Code of Criminal Procedure as the police failed to supply necessary papers as required u/s 173(4), Code of Criminal Procedure. None of the parties agitated against this order of discharge and it became final.

3. The police submitted a fresh charge-sheet on 16.2.1965, and cognizance was taken by the S.D.M. and the case was transferred to the Court of Sri A.C. Das, Magistrate, 1st Class, for disposal. This time the police complied with the requirements of Section 173, Code of Criminal Procedure and the police papers were supplied to the accused. This case was numbered as G.R. Case No. 47/65-43T/65.

4. Sri A.C. Das, Magistrate, by his order dated 1.7.1966 discharged the accused persons again u/s (sic)(A), Code of Criminal Procedure. The ground of discharge was that the accused having been once discharged previously, that order became final and that there cannot be a fresh prosecution on the self-same materials. He held that in the present prosecution, no fresh materials had been disclosed.

5. This order was set aside by the Additional District magistrate (Judicial), I think the A.D.M. (Judicial) was justified in setting aside the order of Sri A.C. Das, Magistrate, 1st Class. One important feature in the present prosecution which was missed by Sri A.C. Das, Magistrate, is that the police papers which had not been supplied during previous prosecution, were supplied when the subsequent charge-sheet was submitted. Those police papers constitute fresh materials in the subsequent prosecution. They might have been physically in existence at the time of the 1st prosecution, but since they were not supplied as required under the mandatory provisions of Section 173, Code of Criminal Procedure, they must be deemed, in the eye of law, to be non-existent. Therefore, the Magistrate was wrong in saying that there was no fresh materials.

The second error that was committed by the Magistrate is that the order taking cognizance of this case was not under challenge before him as indeed it could not be. Cognizance having been once taken rightly or wrongly by the S.D.M., it is not open to the transferee Magistrate to question the same except on the ground of absence of jurisdiction. There does not appear to be any initial lack of jurisdiction in the S.D.M. who took cognizance of the offence on the basis of second charge-sheet. In the circumstances the A.D.M., (Judicial), Cuttack, was justified in setting aside the order passed by the Magistrate Sri A.C. Das.

The revision has no merit and is dismissed.