

(2009) 01 OHC CK 0081

In the Orissa High Court

Case No : Criminal Rev. No. 159 of 2008

Hrudananda Dehury

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 30-01-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 232
Penal Code, 1860 (IPC) — Section 436

Citation : (2009) CLT 520 (Suppl CrI) : (2009) 1 OLR 166 Supp : (2009) OLR 520 (Suppl CrI)

Hon'ble Judges : Pradip Mohanty, J

Bench : Single Bench

Advocate : H.S. Mishra, A.K. Mishra and T.K. Sahoo, for the Appellant; A.G.A., A.K. Mishra-3 and S.C. Panda, for the Respondent

Judgement

Pradip Mohanty, J.—This criminal revision is directed against the order dated 05.01.2008 passed by the S.D.J.M., Bolangir taking cognizance of the offence u/s 436, I.P.C. in G.R. Case No. 543 of 2006.

2. The brief fact of the prosecution case is that 23.8.2006, the Sarpanch of Bandhapara Grama Panchayat reported in writing regarding setting of fire in the office of Bandhapara G.P. office on 13.8.2006 evening. According to the report of the Fire officer, the fire was intentional. The Secretary of the G.P. was present when the Fire men were trying to control the fire. But it was not intimated to the G.P. The Sarpanch also indicated in her F.I.R. that she suspected the hand of the present Petitioner, Secretary, Bandhapara Grama Panchayat behind the setting of fire; as the Secretary was avoiding to produce the relevant register and documents of the Panchayat office. A case was registered u/s 436, I.P.C. where after police recorded statements and seized some documents. Relying upon the statement of witnesses, the seized documents, report of the Fire Brigade and DFSL report, the I.O. filed final form against the present Petitioner u/s 436, I.P.C.

3. Mr. Mishra, learned Counsel for the Petitioner submits that a false case has

been instituted against the present Petitioner, who was the Secretary of Bandhapara Grama Panchayat. There is no material against the present Petitioner to proceed against him u/s 436, I.P.C. But the learned Magistrate has illegally and mechanically and without application of judicial mind taken cognizance u/s 436, I.P.C. He also submitted that all the witnesses were examined on the very day, but the police did not interrogate the present Petitioner and filed charge-sheet against him. Thereafter, the S.D.J.M. took cognizance u/s 436, I.P.C. He further submitted that the occurrence took place on 13.8.2006, but the F.I.R. was lodged on 23.8.2006, i.e. ten days after the occurrence. Such delay in lodging the F.I.R. has not at all been explained. There is also no iota of evidence connecting the accused with the crime. Therefore, the order of cognizance is illegal and liable to be quashed.

4. Mr. Patnaik, learned Additional Government Advocate, on the other hand, drew the notice of this Court to the statement of witnesses and documents and pointed out certain circumstances, which according to him would show sufficient ground to proceed with the case. He also submitted that no illegality has been committed by the SDJM since there is a prima facie case against the present Petitioner. He further submitted that though there is no eye witness to the occurrence, the case is based upon strong circumstantial evidence. The chain is complete and motive of the Petitioner, which is a relevant factor, has been well established. In support of his contentions, he relied upon the charge-sheet, inspection report of Grama Panchayat Officer dated 23.5.2006, the Sub-Collector's letter dated 24.8.2006 and tour programme of B.D.O., statement of independent witnesses with regard to the conduct of accused to the effect that though he was present all through the occurrence, he did the presence of the accused before setting fire and also after the fire not hand over the key of the office to the Fire Brigade Officer and the statement of watchman that before the occurrence, the accused was present with a motor cycle and another vehicle was standing in front of the Panchayat Office. The statement of this witness (watchman) is also corroborated by the statement of the independent witness and the statement of the fireman that there was smell of kerosene.

5. Perused the case record including the case diary. The prosecution in the F.I.R. lodged by the Sarpanch alleged that the Grama Panchayat meeting was held on 22.8.2006. In the said meeting, letter No. 1518 dated 31.6.2006 of the Sub-Collector, Bolangir and the report dated 14.08.2006 of the Fire Station, Bolangir were placed. Further it is also alleged in the F.I.R. that certain documents were called upon by the Sub-Divisional Panchayat Officer to be produced before him on 14.8.2006, but the Petitioner did not place the same and the report of the Fire Officer revealed that the fire was intentional.

6. It appears that there is no eye-witness to the occurrence, but the prosecution has been able to make out a prima facie case against the Petitioner and the motive has been attributed to him. The material placed before the Court also discloses a prima facie case against the present Petitioner. The truth or otherwise

of the case would only be found out at the trial. At the time of taking cognizance it is the duty of the Court to see whether prima facie case is there or not. If the trial Court is satisfied on the basis of the materials produced before it that there does exist a prima facie case, it must take cognizance. In the instant case, the evidence has been collected with regard to motive of the present Petitioner. The conduct of the Petitioner and other circumstances against him make out a prima facie case so as to take cognizance against him. Therefore, the impugned order cannot be faulted.

7. In view of the above, no illegality has been committed by the SDJM, Bolangir in taking cognizance. Therefore, this Court is not inclined to interfere with the impugned order. However, after examination of prosecution witnesses, if no material comes out against the Petitioner, it will be open to him to file an application u/s 232, Code of Criminal Procedure for acquittal at the appropriate stage.

8. The criminal revision is disposed of with the aforesaid observation.