

(2000) 02 OHC CK 0037

In the Orissa High Court

Case No : Criminal Miscellaneous Case No's. 2703 of 1996 and 659 of 1999

Hrushikesh Dhal and Santosh Kumar Sahoo and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 18-02-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482

Citation : (2000) 89 CLT 731 : (2000) 1 OLR 330

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : R.K. Nayak, P.K. Kuanr and C.R. Swain, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—Prayer of the petitioners in both the cases is to set aside the order dated 24.4.1996 as well as to quash the criminal proceeding vide G.R. Case No. 28 of 1989 pending in the Court of the Judicial Magistrate, First Class-cum-Civil Judge (Senior Division), Deogarh. G.R. Case No. 28 of 1989 was registered against four accused persons on the basis of First Information Report lodged by one Paramananda Pradhan on 30.1.1989 alleging therein that at about 8 a.m. during his absence the accused persons assaulted his younger brother by means of iron pipe and caused injuries on the body of his brother. Case was registered Under Sections 452, 342 and 324 read with Section 34, IPC and investigation was taken up. On completion of investigation, the Investigating Officer submitted final report on the ground of insufficient evidence. On the basis of a protest petition, learned Magistrate took cognizance of offences Under Sections 452, 342 and 324 read with Section 34, IPC against all the four accused persons.

In course of trial on 24.4.1996 accused persons remained absent. Learned Magistrate while issuing non-bailable warrant against all the accused persons observed certain irregularities committed by his predecessor while taking cognizance. Challenging the said order, one of the accused persons, namely,

Hrushikesh Dhal has filed Criminal Misc. Case No. 2703 of 1996 and the other three accused persons have filed Criminal Misc. Case No. 659 of 1989 before this Court.

2. Shri R. K. Nayak, learned counsel appearing for the petitioners in both the cases, has urged the following points :

(a) Protest petition was filed prior to the submission of final report and therefore the learned Magistrate could not have acted on the same; and

(b) Procedure for taking cognizance in pursuance of protest petition having not been followed, the order taking cognizance was bad in law and that the proceeding is vitiated.

3. From the order-sheet it appears that on 5.4.1989 the informant filed a protest petition on the basis that final report had been submitted by the Investigating Officer on the ground of insufficiency of evidence. It is clear from the order-sheet that final report had not been submitted by the date for which the case was adjourned to 15.4.1989. On 1 5.4.1 989 when the matter was taken up, the informant was present in the Court to move the protest petition. Final report having not been received, the learned Magistrate directed submission of the same by 29.4.1989. Later in the day the final report was received and the learned Magistrate directed the Investigating Officer to submit the case diary by 29.4.1989. On 6.6.1989 while referring to the protest petition the learned Magistrate took into consideration the FIR, seizure list and the injury report, and took cognizance of the offences Under Sections 452, 342 and 324 read with Section 34, IPC.

4. Considering the first submission of the learned counsel for petitioners, it is found that the protest petition was filed on 5.4.1989, whereas the final report was received from the Investigating Officer on 15.4.1989. It appears from the record that the informant was informed by the Investigating Officer on 30.3.1989 that the final report had been submitted due to insufficient evidence. Said notice was received by the informant on 31.3.1989 and accordingly the protest petition was filed on 5.4.1989. From the order-sheet it is found that even though protest petition was filed prior to submission of final report, the Magistrate had not acted on the protest petition till submission of the final report. There is no illegality in acting upon the protest petition after submission of the final report.

So far as the second submission of the learned counsel for the petitioners is concerned, it is worthwhile to refer to a decision of this Court reported in 1989 (II) OLR 491: Manorama Mohapatra v. Harihar Sathua and Ors.. It has been held by this Court that protest petition when made is to be treated as a petition of complaint and Magistrate has to comply with the provisions of Chapter XV of the Code of Criminal Procedure and after such compliance only, he may issue process to the accused persons or dismiss the complaint.

5. From the order dated 6.6.1989 passed by the learned Magistrate, it is clear

that while considering the protest petition the Magistrate has taken into consideration the FIR, seizure list, injury report, etc. and he has not proceeded under Chapter XV of the Cr.P.C. Requirement of Section 200, Cr.P.C. had not been complied with and as such the order taking cognizance cannot be sustained in law. Since the order taking cognizance is not in accordance with the procedure, same is quashed and accordingly the Criminal Misc. Cases are allowed.