

(1999) 03 OHC CK 0023
In the Orissa High Court
Case No : Criminal Revision No. 100 of 1999

Indrajeet Roy

APPELLANT

Vs

Republic of India and Another

RESPONDENT

Date of Decision : 12-03-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 233(3), 91
Evidence Act, 1872 — Section 145, 146, 153, 157, 161

Citation : (1999) 88 CLT 835 : (1999) 16 OCR 428 : (1999) 1 OLR 421

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : S.C. Lal, B.K. Naik, S.S. Patra and J.K. Khuntia, for the Appellant;
Sanjeet Mohanty, for the Respondent

Judgement

P.K. Misra, J.—The petitioner, who is an accused facing trial in S.T. Case No. 36/5 of 1998, has filed this revision challenging the order dated 16.2.1999 passed by the Chief Judicial Magistrate- cwm-Assistant Sessions Judge, Khurda, rejecting the obligation of the petitioner to call for certain documents. Earlier, the petitioner had filed a similar application before the trial Court on 24.11.1998 which was rejected as not pressed. Subsequently, a fresh petition was filed for the very same purpose which was rejected by the trial Court by order dated 8.12.1998. Against the aforesaid order, the petitioner has filed Criminal Revision No. 580 of 1998. The said revision was disposed of by Hon"ble A. Pasayat, J. by order dated 29.1.1999 in the following manner :

"5. Another "petition was filed to call for certain documents filed in this Court in several OJCs. and in several P.S. Cases, i.e., in Bidanasi P.S. Case and Nayapalli P.S. Case and the station diary entries. Learned trial Judge rejected the petition on the ground that similar petition was filed on 24.11.1998 which was rejected as not pressed on 25.11.1998.

Learned counsel for petitioner states that the documents are of vital importance and a fresh application shall be filed setting out the details/reasons which

necessitate calling for the documents. If such an application is filed, it is needless to say that the learned trial Judge shall deal with the same in accordance with law.

The Criminal revision is accordingly disposed of."

Thereafter, a fresh application was filed before the trial Court on 16.2.1999 which has been rejected by the trial Court by order dated 16.2.1999 with the following observations :

".....Another petition was filed to call for documents i.e., Bidanasi P.S. Case No. 113(2) of 97, Bidanasi P.S. Case No. 64/97. Affidavit filed by Anjana Misra on 8.2.1996 against her father, affidavit filed against Lady Police Inspector. Affidavit filed by the parents of Anjana Mishra, Medical Registration No. 2850 dt. 31.8.1998 and S.D.E. Nos. 45 and 52 dt. 3.4.1995 and other documents. C.B.I. P.P. objected to the calling for of such documents. Heard both parties. At the outset it may be stated that similar petition was filed to call for those documents on 24.11.1998 which was rejected as not pressed and again on 8.12.1998 which was rejected by this Court on merit. Filing of the petition to call for documents again and again on the same ground shows that the accused only wants to delay disposal of the case. All these documents came into existence either much prior or after charge sheet of this case. There is no material showing that these documents has any relevancy to this case. So the petition to call for the documents is rejected."

The aforesaid order is being impugned in this Criminal Revision.

2. The learned counsel appearing for the petitioner has submitted that even though the High Court on earlier occasion had permitted the petitioner to file a fresh petition giving better particulars, yet the trial Court has rejected the said petition mechanically without application of mind by passing a very cryptic order. He has, therefore, submitted that the trial Court may be directed to re-consider the petition. It is, of course, true that prima facie, it appears that the trial Court rejected the petition for calling for certain documents without giving detailed reasons. However, a perusal of the order of the trial Court indicates that the trial Court was not convinced about the relevance of the documents called for and accordingly, the petition was rejected. Though the learned counsel for the petitioner has submitted that the trial Court may be directed to re-consider the question, it is better to dispose of the application in this Court, as the very same matter is being repeatedly challenged.

3. The learned counsel for the petitioner has submitted that opportunity to call for a document u/s 91 of the Code of Criminal Procedure (hereinafter referred to as the "Cr. P.C") is a valuable right of the accused to defend himself and such petition should be liberally considered so that an accused person can have a reasonable opportunity of defending himself. Section 91, Cr. P.C. itself requires that a document can be called for if it is found to be necessary or desirable to do so. Though no accused should have the feeling that he has not been given

sufficient opportunity for defending himself properly, it does not mean that merely for the asking, a document called for by the accused should be directed to be produced irrespective of its relevance. Apart from the provisions contained in Section 91, an accused facing a sessions trial has the opportunity of calling for a document at the stage of entering upon defence, as envisaged in Section 233(3), Cr. P.C. The provision contained in Section 233(3), Cr. P.C. appears to be a bit wider. u/s 233(3), if the accused applies for the issue of any process for production of any document, the Judge is to issue such process unless for reasons to be recorded, it is found that such application should be refused on the ground that the same has been made for the purpose of vexation or delay or for defeating the ends of justice. Whereas, Section 91 is applicable to any stage of a trial, Section 233(3) can be resorted to only at the stage of entering upon the defence of an accused. In the present case, admittedly, the stage of entering upon the defence has not come and as such, the application calling for documents has to be decided keeping the provision of Section 91, Cr. P.C. in mind.

4. Before considering the question as to whether the documents called for by the petitioner are necessary or desirable to be called, it would be appropriate to notice some of the relevant provisions. Section 145 of the Evidence Act prescribes that a witness may be cross-examined as to previous statements made by him in writing or reduced into writing without such writing being shown to him or being proved. Such cross-examination with reference to previous statement should be relevant to matters in question. Section 146 of the Evidence Act lays down that a witness may be asked any questions to test his veracity, to discover who he is and what is his position in life or to shake his credit by injuring his character. However, Section 153 of the Evidence Act provides that when a witness has been asked and has answered any question which is relevant to the injury only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him. Of course, if, the witness answers falsely, he may afterwards be prosecuted for giving false evidence. Section 155 of the Evidence Act envisages that the credit of a witness may be impeached, inter alia, by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted. Section 157 of the Evidence Act envisages that former statement of witness may be proved to corroborate latter testimony. In addition to the provisions contained in the Evidence Act, the provisions contained in Sections 161 and 162, Cr. P.C. are also relevant. A combined reading of Secs. 161 and 162, Cr. P.C. makes it clear that statement of a person recorded by police u/s 161, Cr. P.C. cannot be utilised for any purpose, save and except for the purpose of contradicting a prosecution witness in the manner provided by Section 145 of the Evidence Act. Such statement cannot be utilised for any other purpose, that is to say, for the purpose of corroborating a prosecution witness, nor it can be utilised for either corroborating or contradicting a defence witness. The necessity or desirability of producing a document called for by the petitioner is to be examined keeping in view the

aforesaid aspects in mind.

5. In the petition before the trial Court, the petitioner had called for several documents from various sources. In paragraph-1 of the revision petition, the petitioner has enumerated various documents sought to be produced as items (A) to (L). The learned counsel for the petitioner has addressed lengthy and learned arguments on the necessity/desirability to call for the documents in seriatim, and the learned counsel appearing for the Republic of India has replied like- wise. It is better to take up the items in seriatim.

6. In item (A), the petitioner has sought to call for the case diary in Bidanasi P.S. Case No. 113(2) of 1997 dated 26.9.1997. It has been submitted by the counsel for the petitioner that the said case has been registered on the basis of FIR lodged by one Surendra Kumar Jena, whose statement u/s 164, Cr. P.C. recorded pursuant to the direction of the High Court, has been made available to the petitioner, and from the said statement u/s 164, Cr. P.C. it appears that a conspiracy has been hatched to falsely rope in the accused-petitioner. It has been submitted that the statements recorded u/s 161, Cr. P.C. in the said Bidanasi P.S. Case No. 113(2) of 1997 shall be useful to the petitioner to prove the conspiracy hatched against him.

The statements of persons recorded in course of investigation into the Bidanasi P.S. Case No. 113(2) of 1997 cannot be utilised as substantive evidence. If it is the case of the petitioner that a conspiracy has been hatched, such conspiracy cannot be proved by calling for the statements of persons contained in the Case Diary relating to the aforesaid case, but only by examining those witnesses in the trial itself. It is not the case of the petitioner that he wants to contradict the prosecution witnesses by confronting them with their previous statements recorded in Bidanasi P.S. Case No. 113(2) of 1997. Since such statements recorded cannot be utilised for any other purpose except contradicting the prosecution witnesses, it cannot be said that the statements of various persons recorded in Bidanasi P.S. Case No. 113(2) of 1997 are necessary to be called for in the present trial.

7. In item (B), the petitioner seeks to call for Bidanasi P.S. Case No. 64(14) of 1997. It is stated that the said P.S. Case has been registered on the basis of information lodged by the present informant against her husband and wife of the brother of her husband. It is claimed that the aforesaid case "which case immediately preceded the present case shall also throw enough light the same having direct nexus and bearing with the present case as the accused-petitioner had his involvement as the Advocate General in the above noted case, and the informant, as per the prosecution case, came to discuss with the accused-petitioner in connection with the above noted case". The learned counsel for the petitioner has failed to show any relevance of the statements recorded in the said Case Diary for the purpose of the present trial. I do not see any necessity to call for the said case record.

8. In item (C), the petitioner has sought to call for an affidavit of the informant made on 8.2.1996 "against her parents clearly divulging and disclosing her past.....". Alleged bitter relationship between the informant and her parents, by no stretch of imagination can be said to be a relevant question to be decided in the present trial. Necessity or desirability of calling for such a document is not established and I do not see any reason to call for such a document.

9. In item (D), the petitioner has sought to call for the records available in Bidanasi Police Station relating to the investigation made on the basis of the FIR lodged by the informant against the Lady Police personnel in charge of her personal security. It is claimed in the petition that after the investigation, it has been reported that the allegations were false and such records may be called for.

It is not the case of the petitioner that the aforesaid Case Diary contains any previous statement of any person who is likely to be examined as a prosecution witness. Even assuming that the Investigating Officer has found the allegations to be false, such conclusion is thoroughly irrelevant so far as the present case is concerned. In this connection, it has been argued by the petitioner that the present informant is in the habit of making false allegations against others. Falsity, if any, of the allegations in other cases cannot be considered to be a ground to assume that every allegation made by a person is false, The learned counsel for the petitioner has failed to advance any cogent reason showing the relevance of such case records in the present case. The petitioner has called for the affidavits stated to have been sworn to by the parents of the informant. As already indicated, the scope of the present trial is not to enquire into the alleged strained relationship between the informant and her parents. The affidavits, if any, of the parents by themselves cannot prove or disprove the allegations made in the present case.

10. Items (E), (F), (G), and (H) being similar in nature can be clubbed and taken up together. Under these items, the petitioner seeks to call for the various medical reports relating to examination of the informant in the past prior to the date of occurrence or on some occasions after the date of occurrence. In the petition before the trial Court as well as in the revision petition, it has been indicated by the petitioner that such documents are necessary to cross-examine the prosecution witnesses including the informant. The reports of the various doctors who had allegedly treated the informant in the past or after the date of occurrence may not be admissible as such as substantive evidence, though such reports may be considered to be previous statement of the concerned doctors. The learned counsel for the Republic of India has submitted that the doctors who had allegedly treated the informants on various occasions are not prosecution witnesses. If such doctors would have been examined as prosecution witnesses, their reports prepared at or about the time of examination of the patient could be admissible to corroborate or contradict the statement of such doctors in Court. Since it is the specific case of the prosecution that none of the doctors is sought to be examined as witnesses, the medical reports called for cannot be considered

to be relevant at this stage. Evidently, such medical reports cannot be considered to be the previous statement of the informant and as such those reports may not be necessary for the present for the purpose of cross-examining any of the prosecution witnesses including the informant.

The learned counsel for the petitioner, however, had submitted in course of hearing that the petitioner intends to take a defence relating to mental health of the informant prior to and subsequent to the alleged date of occurrence and for the aforesaid purpose, the medical reports would be relevant. In other words, those documents may be necessary at the time of adducing defence on behalf of the petitioner. The stage of entering upon defence has not come and if the petitioner intends to examine any of the doctors and feels it necessary to call for the documents, he may file appropriate application at the appropriate stage. However, at the present stage, it would be premature to call for those documents. If a petition would be filed subsequently by the petitioner at the stage of entering upon defence calling for those documents, such petition would be considered by the trial Court in accordance with law keeping in view the provisions contained in Section 233, Cr. P.C. and it is not desirable to express any opinion on such aspect at this stage. However, there is no necessity at the present to call for those documents.

11. The documents indicated in item (I) relate to the Case Diary of Nayapalli P.S. Case No. 210 dated 7.10.1997, wherein it was alleged that the informant had attempted to commit suicide, for which the said case had been registered. It is not understood as to how the alleged attempt made by the informant to commit suicide is of any relevance in the present trial. Moreover, since the statements recorded in the said case are not the statements of any of the prosecution witnesses, question of contradicting the prosecution witnesses by their statements recorded in the said case does not arise. If the petitioner wants to examine any of the witnesses as his defence witnesses, statements made by such defence witnesses during course of investigation of the said case are also not relevant, nor admissible for any purpose. The prayer in respect of item (I) must, therefore, be rejected.

12. Item (J) relates to affidavits alleged to have been filed by various deponents refuting the allegations made by the informant against the present petitioner. It is not understood as to how those affidavits are of any avail for the purpose of cross-examining the prosecution witnesses and as such documents indicated in item (J) need not be called for.

13. The allegations made in item (H) relate to the alleged behaviour of the informant towards the security officials entrusted with the charge of providing security to the informant. The petitioner seeks to call for such documents stated to be available in Nayapalli Police Station. Since such statements alleged to have been made before Police are not sought to be utilised for contradicting the prosecution witnesses, I do not consider those documents to be relevant and as such those documents need not be called for.

14. Item (L) relates to some station diary entries maintained in Ramgiri Police Station in Sundargarh district in April, 1995, made against the present informant. Except stating that such entries would be highly relevant, nothing has been pointed out to show about the relevance of those station diary entries.

15. For the aforesaid reasons, I do not find any substance in this revision, which is accordingly dismissed subject to the observations made.

Revision dismissed subject to observations.