
(1989) 03 OHC CK 0034
In the Orissa High Court

Iswar Chandra Patra

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 20-03-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 452, 454
Penal Code, 1860 (IPC) — Section 379

Citation : (1989) 67 CLT 685 : (1989) CriLJ 2019 : (1989) 2 OCR 352

Hon'ble Judges : G.B. Patnaik, J

Bench : Single Bench

Judgement

G.B. Patnaik, J.—The informant is the petitioner assailing the order of the learned Sessions Judge directing that the sum of Rs. 2,005/- be paid to opposite party 2. It was alleged by the petitioner-informant that on the date of occurrence he had sold some land to P.W. 5 and received the consideration money and while coming by bus, the accused snatched away the said money and did not part with the same. On the basis of the said information, a case u/s 379, Penal Code, was registered and ultimately the Magistrate acquitted the accused person. The plea of the accused was that it was true that the informant-petitioner sold the land and obtained the money, but he delivered it voluntarily to the accused in discharge of the prior loan which the informant had taken from the accused. The Magistrate though acquitted the accused yet did not accept his plea and ultimately directed that the money in question be paid to the informant-petitioner to whom the money admittedly belongs. This order of the Magistrate is obviously one u/s 452, Cr. P.C. The accused against the said order directing disposal of the money filed an appeal to the Sessions Judge u/s 454 of the Code, but the informant was not made a party to the said appeal nor had he notice of the same. The Sessions Judge set aside the order of the Magistrate and directed that the money in question be given to the accused from whose possession it was recovered. It is this order of the learned Sessions Judge which is being impugned in the present revision.

2. Mr. Patnaik appearing for the petitioner contends that at the conclusion of the

trial the Magistrate having found that the informant-petitioner is entitled to possession of the money in question, after negating the plea of the accused regarding voluntary payment to him in discharge of an alleged prior loan, the Sessions Judge could not have set aside the same without noticing the informant and without the informant being a party to the appeal. In support of the aforesaid contention, he places reliance on the decision of the Supreme Court in the case of State Bank of India Vs. Rajendra Kumar Singh and Others, , which was in relation to the provisions of the old Code, but the pari materia provisions were considered and the Supreme Court held that without noticing the person concerned who would be really aggrieved by the order, the order could not have been passed. It is admitted by Mr. Das appearing for opposite party 2 that the informant-petitioner had not been made a party to the appeal nor had he any notice of the hearing of the appeal. In my considered opinion, in view of the finding of the Magistrate that the petitioner was entitled to possession of the money in question, the said order cannot be set aside by the Sessions Judge without hearing the person in whose favour the order has been passed by the Magistrate. In that view of the matter and in view of the admitted position that the petitioner was not made a party before the Sessions Judge, the impugned order cannot be sustained. I would accordingly quash the order of the learned Sessions Judge and remit the matter back to him to reconsider the appeal after giving an opportunity of hearing to the informant (petitioner in this revision) and dispose of the same in accordance with law. It is made clear that the learned Sessions Judge will not be in any way embarrassed by any earlier finding made by him while disposing of the appeal which is being set aside by this order.

This Criminal Revision is accordingly allowed.