
(1998) 02 OHC CK 0034

In the Orissa High Court

Case No : Criminal Revision No. 337 of 1996

Jagannath Bose and Another

APPELLANT

Vs

Sudhir Kumar Ray

RESPONDENT

Date of Decision : 09-02-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 147, 148

Citation : (1999) 1 OLR 522

Hon'ble Judges : C.R. Pal, J

Bench : Single Bench

Advocate : Banshidhar Baug and N.N. Mohapatra, for the Appellant; Arun Kumar Mishra and G.S. Panda, for the Respondent

Final Decision : Dismissed

Judgement

C.R. Pal, J.—The petitioners here assails the order dated 24.7.1996 passed by the learned Sub-Divisional Magistrate, Cuttack in Criminal Misc. Case No. 473 of 1994 rejecting the petition filed by the petitioners u/s 148, Cr. .P.C. for a local inquiry.

2. The facts of the case which gave rise to this revision are as follows :

The present opposite party filed a petition u/s 147,Cr. P.C. before the learned Executive Magistrate, Cuttack which was registered as Criminal Misc. Case No. 473 of 1994. It was alleged that there was dispute between the parties concerning right of user of a passage situated between the land purchased by the present opposite party from the late father of petitioner No. 2 of the revision petition and the land of the petitioners. While the said case was pending before the learned Executive Magistrate, the present petitioner filed a petition u/s 148, Cr. P.C. for a local inquiry. The learned Magistrate while rejecting the prayer held that he does not have power himself not being a District Magistrate or a Sub-Divisional Magistrate to depute a subordinate Magistrate to hold local inquiry. He also observed that since local inspection cannot take the place of legal evidence,

the question of making local inspection would be considered after receipt of evidence of both the parties or at any stage, if it is felt absolutely necessary by the Court for a just and fair decision. Against the said order, the present petitioners who were second party before the learned Magistrate filed Criminal Revision No. 676 of 1994 before this Court which came up for disposal before a Division Bench which disposed of the said revision observing as follows :

"..... Considering the contentions raised before us, we find that u/s 148 a presiding officer, at any stage of a proceeding whenever it would be found necessary. The language of the statute is very clear and unambiguous. There is no specific provision or on conclusion of recording of the evidence the fact whenever a local inquiry is necessary for the purpose as indicated above, it is up to the presiding officer to judge the situation and to find reasons for holding local enquiry as contemplated. Secondly, in an appropriate case if within the scheme of the Code of Criminal Procedure, there is no subordinate Executive Magistrate as envisaged u/s 148, the trying Magistrate may refer the matter to either the District Magistrate or the Sub-Divisional Magistrate, as the case may be, for the purpose of appointing any Magistrate subordinate to him to hold local inquiry as contemplated u/s 148 of the Code."

(Reported in Jagannath Bose and Another Vs. Sudhir Kumar Ray and Another,)

With the above observation, the order passed by the learned Magistrate was set aside. Later the Criminal Misc. Case came to the learned S.D.M. for disposal and learned S.D.M. while proceeding with the inquiry u/s 147, Cr. P.C. also recorded the evidence of some witnesses including the present petitioner No. 1. The present petitioners who were 2nd party before the learned S.D.M. filed a memo on 3.7.1996 closing the evidence from their side. When the case was pending for order, they filed a petition again u/s 148, Cr. P.C. praying for a local inquiry as envisaged under the said section. The learned Magistrate after hearing both the sides rejected the prayer by his order dated 24.7.1996, which is under challenge in this revision.

3. The learned counsel for the petitioners submitted that in view of the discrepancies appearing in the evidence adduced by the parties relating to the dispute concerning the right of user of the parties, the learned S.D.M. should have allowed the petition and deputed a Magistrate subordinate to him to hold local inquiry. The learned counsel for the opposite party, on the other hand, submitted that there are ample evidence on record to arrive at a clear finding on the question and as such, no local inquiry is permissible. In the above context, it is noticed from the impugned order that the learned S.D.M. in his order has specifically mentioned that there are sufficient oral and documentary evidence to take a decision about the right of user of the parties. It is also not disputed that the present opposite party who was the first party before the learned S.D.M. has examined as many as 4 witnesses some of whom are close neighbours and some others are official witnesses. The present petitioner No. 1 has also examined himself as 2nd party's witness No. 1 and has adduced evidence in support of

their case. In course of hearing, the learned counsel for the parties also drew my attention to some documents and the evidence adduced by the witnesses on the dispute in question. In view of the oral and documentary evidence adduced by the parties, it can very well be said that there is no illegality in the observation of the learned Magistrate that there are ample evidence to establish the claim or otherwise of the parties. u/s 148, Cr. P.C. it is the District Magistrate or Sub-Divisional Magistrate, as the case may be, to depute any Magistrate subordinate to him for a local inquiry, if it is found necessary. u/s 148, Cr. P.C. the District Magistrate or Sub-Divisional Magistrate, as the case may be, has to take a decision whether a local inquiry is necessary. In order to take such a decision necessarily he is to look into the materials already made available to him. Here the learned S.D.M. who was in seisin of the matter has in unambiguous term observed that in view of the evidence on record, there is no necessity for any local inquiry. In view of the above observation of the learned S.D.M. and under the circumstances as narrated above, I do not find any illegality or impropriety in the order passed by the learned S.D.M. to interfere with the same in revision.

In the result, the Criminal Revision is dismissed.