

(2001) 06 OHC CK 0023

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 1908 of 1995

Kartikeswar Patnaik

APPELLANT

Vs

Sate of Orissa and Another

RESPONDENT

Date of Decision : 21-06-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235(1), 313, 350, 351, 482
Penal Code, 1860 (IPC) — Section 395

Citation : (2001) 21 OCR 70

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

Bench : Single Bench

Advocate : S. Swain, R.C. Swain, D.P. Pradhan, M. Mohanty, J. Pal and D.P. Patnaik, for the Appellant;

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—Petitioner has filed this application u/s 482 of the Code of Criminal Procedure, 1973 (in short, "the Code") with the prayer to set aside the order of conviction and sentence passed against him in Criminal Misc. Case No. 10 of 1995 initiated u/s 350 of the Code by the Assistant Sessions Judge, Balasore, vide the impugned order dated 20.7.1995.

2. A brief reference to the background fact will suffice the purpose + to dispose of the application u/s 482, of the Code. On the basis of the F.I.R. lodged by one Dhirendranath Barik relating to dacoit committed in his house at about 8.30 P.M. on 20.1.1993, Khantapada P.S. Case No. 8 of 1993 was registered. On completion of the investigation, Petitioner as the Circle Inspector of Police, Sadar, Balasore, filed the charge-sheet for the offence punishable u/s 395, I.P.C. against one Sk. Chinna Mohammad alias SIC Sabeer Mahammad in G.R. Case No. 96 of 1993 of the Court of S.D.J.M. Balasore, After commitment of the case to the Court of Session, it was transferred to the file of Additional Sub Judge-cum-Assistant Sessions Judge, Balasore for disposal according to law and there it was registered as S.T. case No. 9/5 of 1995. There were altogether, 14 witnesses

cited in the charge-sheet. On 1.9.1995, the case ended in acquittal after examination of six out of fourteen witnesses mentioned in the charge-sheet. In course of trial, on 10.4.1995, P. Ws. 4,5 and 6 were examined and the Associate Public Prosecutor filed- an application for time to examine the present Petitioner as one of the Investigating Officers, and while allowing that application, learned Assistant Sessions Judge directed that if the Petitioner shall not appear by 18.4.1995, then cognizance u/s 350, Code of Criminal Procedure would be taken against him. Thereafter between 18.4.1995 to 25.8.1995, the case was adjourned to several dates. On the aforesaid dates several orders were passed insisting on the appearance of the Petitioner (I.O.) including issue of warrant and direction to the Superintendent of Police for execution of the same. On 25.8.1995 an order passed by this Court in Criminal Misc. Case No. 1908 of 1995 (i.e., order dated 4.8.1995 passed in Misc. Case No. 826 of 1995 arising out of Criminal Misc. Case No. 1908 of 1995) was produced before the trial Court, wherein Hon'ble Shri Justice R.K. Patra, J had passed order that:

It is stated that trial in S.y. No. 9/5 of 1995 is already over and examination of the Petitioner is not necessary inasmuch as he merely filed the charge-sheet in the case and the prosecution has also filed a petition to that effect before the learned Assistant Sessions Judge. In view of the aforesaid statement made by Shri Nayak, the learned Assistant Sessions Judge is directed to proceed with the case without insisting on the examination of the Petitioner. N.B.W. issued against the Petitioner may not be executed.

Let there be stay of realization of fine in Criminal Misc. Case No. 10 of 1995 on the file of the Assistant Sessions Judge, Balasore.

On receipt of that order, learned Assistant Sessions Judge closed the prosecution case, examined the accused u/s 313, Code of Criminal Procedure and on 1.9.1995 the accused was acquitted of the charge in accordance with the provision in Section 235 (1) of the Code. It also appears from the lower Court record that in Criminal Misc. Case No. 10 of 1995 on 20.7.1995 learned Assistant Sessions Judge recorded the absence of the Petitioner and his failure in filing the show-cause and simultaneously disposed of the said proceeding by imposing of fine of Rs. 50/- on the ground of disobeying the orders of the Court for his appearance-to depose as a witness in the said sessions trial.

3. The Code has authorized the High Court to invoke the inherent power if the High Court is of the opinion that such is to be exercised

- (i) to give effect to any order under the Code;
- (ii) to prevent the abuse of the process of any Court, or
- (iii) otherwise to secure the ends of justice.

In this case the Petitioner has alleged that the trial Court was vindictive in attitude against the Petitioner and chased him in that legal proceeding (sessions trial) with a view to harass and victimize him by passing the aforesaid sentence

of fine. The aforesaid contention of the Petitioner undoubtedly does not come with the four corners of the scope of interference of the above not to first and second ground, as provided u/s 482 of the Code. However, Petitioner's case is considerable under the third cause i.e., to secure the ends of justice. But, in view of the provision in Section 351 of the Code when remedy by way of appeal against an order of conviction u/s 350 is available to the Petitioner, this Court does not find necessity of invoking the inherent power in such a case inasmuch as the Petitioner can resort to the provision u/s 351. Code of Criminal Procedure in seeking appropriate remedy. The Petitioner perhaps was not properly advised about the legal and statutory remedy available to him while seeking the redresses u/s 482 of the Code. That, while expressing no opinion on the merit of the contention of the Petitioner, this Court disposes of the application with an observation that, if so advised, Petitioner may seek redress as provided in Section 351 of the Code. of course, there has been considerable delay in the meantime, but that is no ground for this Court to consider the application u/s 482, Code of Criminal Procedure inasmuch as the Petitioner can pray for condonation of delay while preferring appeal, if so advised.

4. Accordingly, the Criminal Misc. case is dismissed. The stay order passed by this Court relating to non-execution of the sentence of fine shall remain operative for a further period of one month or until appropriate order is passed by the appellate Court, if any such appeal shall be preferred in the mean time, whichever occurs earlier.