
(2002) 01 OHC CK 0042

In the Orissa High Court

Case No : Criminal Miscellaneous Case No's. 773 and 1290 of 1997

Kelu Charan Sahu and Trilochan Panda

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 30-01-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 201, 379

Citation : (2002) 93 CLT 457 : (2002) OLR 499 Supp

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : D.P. Dhal, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—These applications u/s 482 Cr.P.C. have been filed challenging the order dated 2.3.94 passed by the learned Judicial Magistrate First Class, Laxmipur taking cognizance of offence u/s 201 of the Indian Penal code against the petitioners in both cases.

2. Mr. Dhal appearing for the petitioners submitted that the facts and circumstances on the basis of which the impugned order has been passed has no basis and on the other hand there is an admission on the part of the informant with regard to non-involvement of the principal accused in the alleged offence. Therefore, when the order of cognizance u/s 379 of the Indian Penal Code against the principal accused cannot stand the Magistrate could not have taken cognizance u/s 201 I.P.C. against the present petitioners. From the record, it appears that on the basis of information lodged by the informant Madhusudan Nayak investigation was taken up. The allegation in the F.I.R. is that the informant is a contractor and he had been supplied with 4 numbers of hume pipes from the block office and he had kept them in the field of Kakiriguma High School. On 23.4.93 at about 3.00 P.M., a tractor with a trolley without having any

registration number were found carrying the hume pipes and immediately information was lodged and the hume pipes were seized by the police in course of investigation. After investigation final report was submitted stating that the allegations are false and frivolous. Even though final report was submitted the learned Magistrate took cognizance of the offence u/s 379 I.P.C. against one Jhadeswar Nayak. During trial, the informant was examined as P.W. 1. In his examination he has stated that on the date of occurrence at about 6.00 P.M. in the evening the petitioners in both the cases asked him to sign a receipt in back date showing that the hume pipes had been handed over to them. Though initially the informant refused to sign, he was forced to do so and since he was working-as a contractor under the aforesaid two persons, he had signed the document under pressure. Taking these facts into consideration, the learned Magistrate took cognizance of the offence u/s 201 I.P.C. against the present petitioners in the impugned order.

3. The learned Addl. Standing Counsel, in reply to the argument of Shri Dhal, submitted that even if it is accepted that the accused Jhadeswar Nayak was not involved in the commission of the offence, since the crime has been committed, the learned Magistrate was justified in taking cognizance u/s 201 I.P.C. against the petitioners.

4. From the evidence of the informant it appears that in cross-examination he had stated that at the time of occurrence, the tractor was being driven by one Janardan Naidu and two other persons, namely, Diso Muduli and Gangadhar Bisoi were also the occupants of the said tractor. The accused Jhadeswar was not present either in the tractor or near that place and that the accused was not taking hume pipes. The learned Magistrate has not taken cognizance against the three persons, namely, Janardan Naidu, Diso Muduli and Gangadhar Bisoi, who were the occupants of the tractor, whereas he has taken cognizance u/s 201 I.P.C. against the present petitioners.

5. Section 201 of the Indian Penal Code prescribes thus :

"Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall if the offence which he known or believes to have been committed is punishable with death, be punished in the manner prescribed in the provision."

6. Here is a case where the informant has not implicated the accused Jhadeswar and on the other hand has clearly stated that the accused Jhadeswar Nayak was not present either in the tractor or near about the place and also did not commit theft of the hume pipes. In view of such evidence, it can safely be held that there is no case against the accused Jhadeswar for which he could be convicted u/s 379 of the Indian Penal Code, whom the present petitioners were trying to

screen, I am, therefore of the view that under the Peculiar facts of this case, the offence u/s 201 I.P.C. has not been established. I, therefore, allow the petitions and quash the impugned order.