

(2021) 07 OHC CK 0051

In the Orissa High Court

Case No : Criminal Revision No. 704 Of 2013

Manu @ Amaresh @ Amaresh Kumar Samal

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 06-07-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 227, 397, 401
Indian Penal Code, 1860 — Section 34, 302, 380

Citation : (2021) 07 OHC CK 0051

Hon'ble Judges : S. Pujahari, J

Bench : Single Bench

Advocate : S.P. Dash

Final Decision : Dismissed

Judgement

S. Pujahari, J

1. The legality and propriety of the order dated 5. 08.2013 passed by the learned 3rd Addl. Sessions Judge, Cuttack in S.T. No.219 of 2013 rejecting

the application of the petitioner under Section 227 of Cr.P.C. for discharge, is under challenge in the present criminal revision under Section 401 read

with Section 397 of Cr.P.C.

2. For the offence of murder of one Govinda Chandra Samal and theft of a cell phone etc., the petitioner along with co-accused persons has been

charge-sheeted under Sections 302/380/34 of IPC in Choudwar P.S. Case No.155 of 2012 corresponding to G.R. Case No.1284 of 2012, and the case

upon being committed to the Court of Session was transferred to the court of the 3rd Addl. Sessions Judge, Cuttack and registered as S.T. No.219 of

2013. The petitioner filed an application purportedly under Section 227 of Cr.P.C. seeking for discharge from the offences and the learned 3rd Addl.

Sessions Judge, Cuttack, rejected the same vide the impugned order dated 05.08.2013. Hence, the present revision application.

3.Â Heard the learned counsel for the parties and perused the impugned order and other relevant papers on record vis-Â -vis the grounds taken by

the accused-petitioner that the prosecution having not produced any legal evidence to show his complicity in the alleged incident, the learned Court

below committed illegality in not discharging him from the offences.

4.Â In course of the hearing, it was submitted by the learned counsel for the petitioner that except the alleged confessional statement of a co-accused

before the police implicating the petitioner, there is nothing else on record suggesting his any nexus with the case incident. It is his further contention

that confession before the police has no evidentiary value, and the whole prosecution edifice has no foundational basis, inasmuch as while there is no

direct evidence, the chain of circumstances furnished by the prosecution is neither complete nor conclusive.

5.Â The learned counsel appearing for the State has defended the impugned order. According to him, there being no patent illegality or impropriety in

the said order, no revisional interference is called for.

6.Â The Apex Court in the case of Suresh Alias Pappu Bhudharmal Kalani vrs. State of Maharashtra, reported in (2001) 3 SCC 703, have held

as follows:-

â??At the stage of framing of the charge the court has to consider the material with a view to find out if there is ground for presuming that the accused has

committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead

to a conviction. The court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate

evidence to conclude whether the materials produced are sufficient or not for convicting the accused. Each case depends upon its particular facts and circumstances

and sometimes even a remote link between the activities of an accused and the facts of the case may justify a reasonable inference warranting a judicial finding that

there is ground for presuming that an accused has committed the offence or at

least to presume that the question of his being directly or indirectly involved in the

commission of such offence is not to be ruled out.â?? [Quoted from Placitum]

7.Â Keeping in view the aforesaid law laid down by the Apex Court with regard to framing of charge, when the contention raised by the learned

counsel for the petitioner vis-Ã -vis the materials on record is addressed, it appears to this Court that the incriminating materials are there on record

against the petitioner, i.e., the petitioner was not pulling well with his deceased grand-father, so also the wooden box which was in the shop of the

deceased, was found with the house of the petitioner soon after the murder of the deceased. Therefore, there cannot be said that in this case the

charge has been framed on surmises and conjectures, even though absolutely no legal evidence to proceed against the petitioner indicating his

indictment in the charge. As such, since I find no illegality or impropriety in the order impugned, the present application deserves no consideration.

8.Â Hence, the CRLREV stands dismissed.

As the restrictions due to resurgence of COVID-

19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Courtâ??s website, at par with

certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Courtâ??s Notice No.4587, dated 25th March, 2020

as modified by Courtâ??s Notice No.4798, dated 15th April, 2021.

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