
(2013) 04 OHC CK 0003
In the Orissa High Court
Case No : Criminal Revision No. 7 of 2009

Mitu @ Rabindra Suar and Another

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 25-04-2013

Acts Referred:

Citation : (2013) 116 CLT 412 : (2013) 1 OLR 1086

Hon'ble Judges : B.K. Nayak, J

Bench : Single Bench

Advocate : Sangam Kumar Sahoo, Smt. Gitanjali Sahoo, M.K. Mallik, D.P. Pattnaik, B.P. Mohanty and A. Mohanty, for the Appellant; Jafarulia, Learned Additional Standing Counsel, A. Mohanty, B.B. Behera, P. Mohanty and A. Das, for the Respondent

Judgement

B.K. Nayak, J.—In this Revision the Petitioners assail Order Dated 21.10.2008 passed by the Additional Sessions Judge, Kendrapara, in S.T. Case No. 108/2008 framing charges against the Petitioners under Sections 427, 294, 506/34, I.P.C. & Section 3(1)(v) of S.C. & S.T. (PA) Act. The Petitioners have no grievance so far as framing of charge under the Sections of I.P.O. is concerned. The only grievance is that no offence u/s 3(1)(v) of S.C. & S.T. (PA) Act is made out, & therefore, the charge could not be framed against them for the said offence.

2. F.I.R. was lodged by O.P.2, wherein it is alleged that he has civil dispute with the father of Petitioner No. 1 & that a suit is also pending in the Court of Learned Civil Judge (Jr. Divin), Kendrapara but in order to harass & put him into financial loss, the Petitioners came with some other persons & abused the inmates of the house in filthy language & damaged their kitchen & some kitchen ware & other materials kept in the kitchen. There were also allegation of assault by slap & fist blows etc.

3. The submission of the Learned Counsel for the Petitioners is that no land particular etc, over which the house in question stands, has been mentioned in the F.I.R. & that during investigation the Investigating Officer found that the

informant has purchased only Ac. 0.02 decs. 1 kadi of land in three plots from khata No. 280, i.e., Ac.0.01 dec. 1 kadi in plot No. 348, 4 kadis in plot No. 360 & 6 kadis in plot No. 361 from the previous owner, Narayan Prasad Das, on 5.5.1999 & got it mutated in his name, & that out of the said khata & plots, the rest part of the land, i.e., major portion extending to Ac. 1.71 decs. 9 kadis has been purchased by Balaram Suar, the father of Petitioner No. 1, from the original owner, Narayan Prasad Das on 3.5.2006. This fact has been mentioned in the Case Diary Itself dated 3.8.2007. It is also mentioned therein that on demarcation of land by Balaram Suar, it was found that the informant had encroached some portion of his land. That apart, the location of the plots of the informant is different. It is further mentioned that in view of the dispute with regard to ownership & possession over the land, a civil suit has been filed, which is subjudiced. It is also mentioned that the present occurrence took place when the complainant's sons were trying to repair a shed on the disputed land.

4. Learned Counsel for the Petitioners also brought to the notice of this Court the Order Dated 27.8.2007 passed by the Learned Civil Judge (Jr. Divn.), Kendrapara in I.A. No. 114/2007 (arising out of Civil Suit No. 132/2006) whereby on the application of the Petitioner's father as Plaintiff-Petitioner, the Learned Civil Judge (Jr. Divn.) passed interim injunction order directing O. P.2, informant, not to encroach upon the suit schedule land. For passing such order, after taking into consideration different materials, the Learned Civil Judge prima facie came to the conclusion that the Plaintiff-Petitioner was in possession of the suit plot.

5. Section 3(1)(v) of S.C. & S.T. (PA) Act provides that whoever, not being a member of a Scheduled Caste or a Scheduled Tribe-wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years & with fine.

The requirement of the provision is that the land or premises must have belonged to the aggrieved person, who is either a Scheduled Caste or Scheduled Tribe. This does not-mean that where there is a scramble with regard to ownership & possession over the land & civil disputes are pending, it can be said that the property in question belongs to the aggrieved person. In the instant case, the I.O. found as per their Case Diary that there is a scramble for ownership & possession over the disputed land & admittedly, the Civil Court has also prima facie found possession with the father of Petitioner No. 1 & restrained the informant from coming over the land & interfering with possession of the Plaintiff. The civil suit has been filed prior to lodging of F.I.R. & the impugned order has been passed in favour of the Plaintiff, application for which has been filed prior to lodging of F.I.R.

Having regard to the materials, as discussed above, this Court is of the view that no offence u/s 3(1)(v) of S.C. & S.T. (PA) Act has been made out against the Petitioners. Therefore, the charge framed thereunder against the Petitioners is

not sustainable. Accordingly, the Revision is allowed in part & the charge framed u/s 3(1)(v) of S.C. & S.T. (PA) Act is set aside. However, the Petitioners have to face trial for the other charges framed under different provisions of Indian penal Code.