
(2006) 07 OHC CK 0040

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 129 of 2006

Nanda Kishore Maharana

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-07-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 190, 200, 302, 306

Citation : (2006) 102 CLT 289 : (2006) 1 OLR 1094 Supp

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : Sujata Dash, R.P. Das and R. Choudhary, for the Appellant; S. Pradhan, ASC, for the Respondent

Judgement

L. Mohapatra, J.—The Petitioner who is the informant has filed this writ application praying for a direction to the opposite parties to hand over investigation to the C.B.I, to investigate into the offence alleged.

2. The case of the petitioner as narrated in the FIR is that on 11.3. 2005 at about 8.30 A.M. he received information that the dead body of his brother Rama Kishore Maharana was seen hanging from the iron ladder within the premises of Sub-Collector's office. After receiving the information, he reached the spot and found that the police had already brought down the dead body and it was lying on the floor. He also alleges that he had seen injuries on hand, neck as well as thigh of the deceased. Suspecting the same to be a murder, upon inquiry he learnt that on 9.3.2005 the deceased had gone to the office of the Sub-Collector and on the said date some lawyers were shouting at some of the Sikshya Sahayakas including the deceased and were threatening to kill him. The allegation of the petitioner is that the said F.I.R. is not being registered and investigation is not being taken up. The learned Counsel for the State has produced the Case diary, which shows that after recovery of the dead body from the premises of the Sub-Collector's office, U.D. Case No. 4 dated 11.3.2005 has been registered and inquiry was taken up. During inquiry it was found that on

9.3.2005 the deceased was distributing blank affidavit forms to the candidates appearing for appointment as Sikshya Sahayak carrying signatures of an Advocate and a Notary Public. Such conduct of the deceased was objected to by some of the advocates and the matter has subsided on the very same day. The dead body of the deceased was found two days after in the office premises of the Sub-Collector. Postmortem report also shows that there was ligature mark on the neck and it was sufficient to cause death. It was also found that there were no external antemortem injuries or sign of struggle over the body and, therefore, the Officer inquiring into the matter was of the opinion that possibility of suicidal hanging cannot be ruled out. Further, from the Case diary it appears that the matter has not been closed and inquiry is going on. So far as FIR of the petitioner is concerned, it is stated by the Learned. Counsel for the State that since an U.D. Case has already been registered, the FIR lodged by the petitioner had been received and was entered in the Stationery Diary vide Station Diary Entry No. 243 dated 13.3.2005 at 5.30 P.M.

3. Dr. Sujata Dash, the learned Counsel appearing for the petitioner submitted that the Investigation Officer is not behaving in impartial manner-and the incident of 9th March, 2005 may be a cause for committing suicide also though the petitioner stuck to the stand that his brother was killed. It was further contended by Dr. Dash that even if such a plea is- accepted, at least offence u/s 306 of the Penal Code is made out, if not offence u/s 302 of the Penal Code.

4. There is no dispute that after receiving information about death of the deceased, an U.D. Case has already been registered and an inquiry has already been taken up. There is also no dispute that the inquiry is still continuing and has not been concluded. There is also no dispute that the FIR lodged by the petitioner has been accepted and registered as Station Diary Entry. The prayer of the petitioner in this writ application is for a direction to hand over investigation to the CBI. In this connection, a recent decision of the Apex Court is of great bearing. In the Case of Hari Singh v. State of Uttar Pradesh reported in AIR 2006 SC 3230 the Apex Court held as follow :

When the information is laid with the police, but no action in that behalf is taken, the complainant can u/s 190 read with Section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie Case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint u/s 203 of Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of

the offence and would issue process to the accused. These aspects have been highlighted by this Court in All India Institute of Medical Sciences Employees' Union (Reg.) through its President v. Union of India and Ors. (1996) 2 SCC 582. It was specifically observed that a writ petition in such cases is not to be entertained.

The above position was again highlighted recently, in Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others, and in Minu Kumari and Another Vs. The State of Bihar and Others, .

That being so, this petition is not to be entertained. It is Case of the petitioner that he is under constant threat by some persons and his life and property are in danger. If he seeks any protection, it is the duty of the concerned police officials to provide such security as are warranted in the circumstances in accordance with law.

5. In view of what has been decided in the aforesaid Case, if the petitioner is not satisfied with the investigation, it is open for the petitioner to file a complaint and a writ application for the above purpose cannot be entertained.

I accordingly do not find any merit in the writ application and same is dismissed.