

(1995) 08 OHC CK 0019

In the Orissa High Court

Case No : Criminal Appeal No. 5 of 1986 and Criminal Revision No. 24 of 1986

Narayan Chandra Naik

APPELLANT

Vs

Surjya Gomango and Others

RESPONDENT

Date of Decision : 18-08-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 452
Penal Code, 1860 (IPC) — Section 34, 379, 447

Citation : (1996) CriLJ 1580 : (1996) 1 OLR 95 : (1996) 1 OLR 94

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : S.K. Padhi, for the Appellant; B. Senapati and N. Prusty, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A. Pasayat, J.—These two cases are taken up together since they are inter-linked.

2. These cases have been filed by Narayan Chandra Naik, son of Bipin Chandra Naik, (hereinafter referred to as "informant") who died after institution of the proceedings. Revision is filed questioning correctness of the judgment of acquittal passed in appeal by learned 1st Additional Sessions Judge, Ganjam, Berhampur holding that the conviction and sentence passed by the learned Judicial Magistrate First Class, Parlakhemundi (in short, "JMFC") was not sustainable. Appeal is u/s 454 of the Code of Criminal Procedure, 1973 (in short, "the Code") wherein correctness of the direction given by the appellate Court for return of the seized paddy crops to the persons from whom seized is under challenge.

3. Respondents (in appeal) and opposite parties (in revision) 1 to 8 faced trial for the alleged commission of offence punishable under Sections 447/379 read with Section 34 of the Indian Penal Code, 1860 (in short, the IPC).

4. Accusations which led to the filing of the proceedings essentially are as

follows :

Though there was a proceeding u/s 145 of the Code pending before Subdivisional Judicial Magistrate Parlakhemundi and an order of attachment has been passed u/s 146(1) of the Code, in the year 1982, the accused persons (respondents and opposite parties herein) had illegally grown crops on the disputed case land. After attachment of the land. Revenue inspector (PW 1) was appointed as receiver and he was directed to put the standing crop to sale. Accordingly, on 18-10-1982 after due notice to the persons concerned, including the accused persons, standing crop on the disputed land was put to auction and one Utpati Ganta (PW 3) being the highest bidder, auction was knocked down in his favour. It was confirmed on 16-11-1982. On 8-11-1982, accused persons trespassed into the case land and removed the crop from about two acres of land. The matter was reported to the police by PW 1 on 17-11-1982. After investigation police submitted charge-sheet.

5. Accused persons pleaded that though a proceeding u/s 145 of the Code in respect of the land in question was pending, they had grown crop there, and they had no knowledge of any order of attachment or the auction. There is nothing wrong in their harvesting crop.

6. Though the learned JMFC held the accused persons guilty and convicted and sentenced them, the learned 1st Additional Sessions Judge held that there was no material whatsoever on record to show about accused persons having any knowledge about the order of attachment or the auction sale. In the aforesaid background it was held that the charges were not established.

7. The stand of the informant (appellant and petitioner herein) is that after having accepted about knowledge of proceeding u/s 145 of the Code, further plea of the accused persons that they had no knowledge about the order of attachment and/or auction is not believable and the learned 1st Additional Sessions Judge ought not to have accepted the said plea. Learned counsel for the accused persons on the other hand submitted that the prosecution has to establish the knowledge, and on mere surmise and conjecture, an inference cannot be drawn about knowledge.

8. The appellate Court has elaborately dealt with evidence of the parties, and has also referred to the statement of the accused persons recorded u/s 313 of the Code. No material was brought on record to show that accused persons had any knowledge relating to the order of attachment or auction. Interestingly PW 1 stated that the occurrence took place on 18-10-1982. PW 2 stated it to be 18-3-1982 and PW 3 (the auction-bidder) stated it to be 18-11-1982. Witnesses did not specify the land from which removal was made. This was necessary as the total land involved in the proceeding u/s 145 of the Code was twelve acres. The conclusions of the learned 1st Additional Sessions Judge, therefore, cannot be faulted. Revision is without any merit and is accordingly dismissed.

9. So far as the appeal u/s 454 is concerned, it has to be noted that u/s 452 of

the Code conclusion of enquiry or trial in any Criminal Court, is authorised to make such order as it thinks fit for disposal, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed or which has been used for commission of any offence. Any person aggrieved by an order made by a Court u/s 452 of the Code may appeal against it to the Court to which appeals ordinarily lie from the convictions by the former Court. To enable a Court to act u/s 452 of the Code, the property or document in question-(a) must be produced before it, or (b) must be in its custody, or (c) it must have been used for the commission of any offence, and one of these conditions at least must exist in an enquiry or trial in such Court. The operation of this Section has been enlarged so as to enable a Court to pass orders for the disposal of any property produced before it. The words "any person claiming to be entitled to possession" do contemplate a claim to the property having been made before the Court.

10. Neither the informant nor his son claims to be entitled to the possession of the property. Prosecution case was that PW 3 was the highest bidder and, therefore, was entitled to possession of disputed property. Interestingly PW 3 has not preferred any appeal. Learned counsel for the appellant could not throw any light as to how either the informant or his, son can be treated as a person aggrieved by an order passed by a Court u/s 452 directing disposal of the property to the persons from whom the articles were seized.

I find no merit in this appeal, which is accordingly dismissed.