
(2009) 09 OHC CK 0045

In the Orissa High Court

Case No : Criminal Miscellaneous case No. 1430 of 2007

Om Oil and Flour Mills Ltd.

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 01-09-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 120B, 420, 426, 467, 468

Citation : (2009) 2 ILR (Ori) 492 : (2009) 44 OCR 715 : (2009) 2 OLR 332 Supp

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—Heard Mr. G.K. Mohanty, learned Counsel for the Petitioner and the learned Counsel for the opposite party No. 2 as well as the learned Counsel for the State.

2. In this application u/s 482, Code of Criminal Procedure the Petitioner-complainant has challenged the order dated 07.07.07 passed by the learned Additional Sessions Judge, Bhubaneswar in CrI. Revision No. 1/43 of 2007.

3. The facts as disclosed reveals that the Petitioner filed a complaint petition being I.C.C. Case No. 3564 of 2007 against the opposite party No. 2 as accused alleging commission of offences under Sections 420/426/ 500/ 503/ 467/468/471/506/120B, I.P.C. on 01.06.07. The learned S.D.J.M. by order dated 01.06.07 directed the LLC, Khandagiri P.S. to register a case being I.C.C. Case No. 2564 of 2007 on the complaint petition and to investigate into the allegations contained therein by exercising power u/s 156(3), Cr.P.C: Being aggrieved by the said order, the accused - opposite party No. 2 preferred the aforementioned CrI. Revision No. 1/43 of 2007 which was heard by the learned Additional Sessions Judge, Bhubaneswar.

4. Grounds stated in the Criminal Revision were that the learned S.D.J.M. without

due application of judicial mind gave a direction to the police to investigate the case in a mechanical manner. According to the accused, the complaint petition did not disclosed commission of any cognizable offence and has been filed only with the intention to harass the accused with ulterior motive. In the impugned order, the learned Additional Sessions Judge after hearing the counsel for the respective parties, relying upon the decision in the cases of 2002 (2) CCC 302 (Allahabad) (Gulab Chand Upadhyaya v. State of U.P. and Ors.) 2006 (4) CCC 557 (Allahabad) Ram Kishun and Ors. v. State of U.P.) and 2005 (4) CCC 128 (Kerala) (Superintendent of Police, C.B.I. v. State of Kerala) observed that through a Magistrate having jurisdiction over the matter is statutorily empowered to direct an investigation by the police on a complaint petition u/s 156(3) , Code of Criminal Procedure Nevertheless, such power is not to be exercised mechanically and at the instance of the complaint. Before a direction for police investigation is given, there shall be proper application of judicial mind and the circumstances indicated in the complaint must necessitate investigation by the police by deviating from the normal procedure with regard to the complaint case. The revisional court thereafter concluding that the learned Magistrate has not applied his judicial mind while directing registration of an F.I.R. ultimately allowed the revision in part setting aside the impugned order passed by the learned Magistrate directing investigation on the complaint petition and remitted the matter back to him to pass a speaking order in accordance with the ratio of the decisions relied upon by it, before exercising power u/s 156(3), Code of Criminal Procedure The complaint- Petitioner being aggrieved has filed the present application.

5. Mr. G.K. Mohanty, learned Counsel for the Petitioner relies upon the decisions in the case of Madhu Bala Vs. Suresh Kumar and others, , Abdul Jahangir and Ors. v. State of Orissa and Ors. (2008) 18 OCR 207, Puma Chandra Sahoo v. Santi " Sukanti and Anr. (2005) 30 OCR 268 and Mohd. Yousuf v. Smt. Afraq Jahan and Anr. (2006) 33 OCR (SC) 345, in support of his contention that while exercising power u/s 156(3), Code of Criminal Procedure the Magistrate is not required to find out as to whether a case is made out in the complaint petition or not against the accused and such orders are passed before cognizance of offences is taken by the Magistrate. He further relies upon the decision in the case of Kanaksinh Hathisinh Jadeja and Others Vs. Blabhadrasinh Narendraisinh Jhala and Another, and submits that the Magistrate is not required to record any reason before sending a case for police investigation u/s 156(3) Code of Criminal Procedure and the accused has no locus standi to challenge the direction of the Magistrate where by he directs the police to investigate into the allegations made in the complaint petition u/s 156(3), Code of Criminal Procedure Nothing was revealed from the order passed by the learned S.D.J.M., which was under revision that the learned S.D.J.M. did not apply his judicial mind to the case.

6. When a complaint petition is filed before a Magistrate by the complaint, at that stage the accused is not present before the Magistrate. To exercise power u/s 156(3), Cr.P.C, the Magistrate is to look into the allegations made in the

complaint and if he is of the view that the nature of allegations made should be investigated by the police as some of the materials on which the complainant relies are to be unearthed during investigation by the police and cannot be produced by the complainant, the Magistrate is authorized to direct the police to investigate into the matter.

7. On a bare perusal of the complaint petition, it is seen that the nature of allegations made required investigation by the police, which cannot be prima facie substantiated even by an inquiry u/s 202, Code of Criminal Procedure. The finding of the revisional court that the Magistrate did not apply by his judicial mind is not based on any materials since the order passed by the learned S.D.J.M. was solely on the basis of allegations made in the complaint petition and he was required to peruse the nature of allegations and nothing more.

8. In view of the ratio of the decisions cited by Mr. Mohanty, this Court is of the view that in the facts of the present case, the learned Additional Sessions Judge should not have set aside the order passed by the learned S.D.J.M, u/s 156(3) Code of Criminal Procedure directing registration of the complaint petition as an F.I.R . and taking up investigation thereon by the concerned Police. As a matter of fact after passing of the order by the learned S.D.J.M, the complaint petition has been registered as an F.I.R. being Khandagiri P.S. Case No. 161 of 2007.

9. Considering the above aspects of the matter, the impugned order is found to be unsustainable and is accordingly set aside and the police is directed to take up investigation of Khandagiri P.S. Case No. 161 /2007 as directed by the learned S.D.J.M., Bhubaneswar.

10. The CRLMC is accordingly allowed.