
(2002) 07 OHC CK 0091

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 1908 of 2001

Prafulla Kumar Mallick

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 09-07-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 482
Orissa Forest Act, 1972 — Section 66
Penal Code, 1860 (IPC) — Section 34, 454

Citation : (2003) CLT 194 (Suppl CrI) : (2002) 2 OLR 699

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : S.K. Padhi and Associates, for the Appellant; Yeeshan Mohanty and Associates, for the Respondent

Judgement

B.P. Das, J.—This is an application u/s 482, Cr.P.C. with a prayer to quash the cognizance taken against the petitioner in G.R. Case No. 244 of 1999 by the learned J.M.F.C., Khariar. The petitioner is an Officer of Indian Forest Service and at the relevant time was posted as the Divisional Forest Officer, Khariar Division in the district of Nuapada.

2. The narration of facts in the application reveals that the opposite party No. 2 is the informant in the aforesaid G. R. Case in which a final form was submitted after the investigation against which a protest petition was filed by opposite party No. 2 and ultimately cognizance was taken for the offence u/s 454/34, I.P.C. read with Section 66 of the Orissa Forest Act, 1972.

3. The case of the present petitioner is that basing upon the information regarding illegal felling of trees and confidential messages on 17.11.1999 the Divisional Forest Officer asked the Collector, Nuapada to depute a Magistrate for conducting the raid in Jholpathar village. As the Magistrate was not available on that day, the Divisional Forest Officer made a requisition for A.P.R. force and accordingly on 17.11.1999 the present petitioner accompanied by 18 Forest

Officials including two Divisional Forest Officers as well as Circle Inspector of Police conducted a raid in the shop premises of opposite party No. 2 at Jholpathar village. Arinexure-5 reveals that several pieces of wooden planks were seized from the premises of opposite party No. 2. As far as the case of the petitioner goes, several cases were pending against the present opposite party No. 2 who is the complainant in the Court below. It is further indicated in the present application that as many as seven cases on the allegation relating to forest offences are pending against Rajendra Mohapatra and Upendra Mohapatra, Rajendra Mohapatra is none other than the brother of Birendra Mohapatra, the present opposite party No. 2. As the case of the petitioner goes immediately after the seizure was made by the forest authorities an F.I.R. was lodged by the present opposite party No. 2 on 18.11.1999 alleging therein that on the fateful day at about 3.30. P.M., the present opposite party No. 2 returned home from his place of work and found that four persons namely Mahendra Mohapatra, Saroj Kumar Agasti, Partulya Mund, Dhirendra Mohapatra and others were present in front of his house and to his surprise, the forest staff, namely, Sri Prafulla Kumar Mallick, D.F.O. (Territorial) Khariar. 2) Sri Pandab Behera. D.F.O. (Territorial), Balangir, 3) Ranger, Khariar, 4) Ranger, Komna, 5) Ranger, Kantabanji, 6) Ranger, Muribahal, Foresters and Forest Guards have unauthorisedly trespassed into his house by breaking open the lock and staples of the door and removed the household articles like, cot (old), almirah (old), gold, cash in two trucks. It was further alleged in the said F.I.R. that the aforesaid officers abused him in filthy language disclosing their identity to be two district level officials having the power of a District Magistrate to enter into any house by breaking open the lock. It was alleged that though the opposite party No. 2 was arrested, the arresting officer failed to give any reason of his arrest that too the arresting officers did not inform the fact of arrest to his relatives as per the guideline of the Apex Court. Thereafter, he was taken to the office of the Divisional Forest Officer, Khariar by a jeep where the Divisional Forest Officer on the promise of withdrawing the forest cases initiated against him, deceitfully obtained his signatures in three papers which were later on turned to be the bail bond, seizure list and search warrant.

4. Basing upon the aforesaid F.I.R., investigation was started and a final report was submitted as the F.I.R. found to be false. Thereafter, the opposite party No. 2 filed a protest petition on which, after inquiry u/s 202, Cr.P.C., the J.M.F.C. Khariar took cognizance of offences as stated earlier.

5. Learned counsel for the petitioner submits that this is a case where the petitioner is a public officer and the offence alleged to have been committed during the discharge of his official duty for which he is entitled to the protection u/s 197 of the Code of Criminal Procedure.

6. Mr. Mohanty, learned counsel for opposite party No. 2 submits that there is nexus between the act alleged to have been committed by the officer with his public duty for which he is not entitled to get the protection u/s 197 of the Code of Criminal Procedure. In this regard, he draws my attention to various aspects

including the fact that the case was initially, handed over to one Investigating Officer and later on by the influence of some officers, the Investigating Officer was changed and another Investigating Officer was appointed with a motive to give a clean chit to the officials who had committed the offence as alleged. The learned counsel for opposite party No. 2 further submits that the act of the Divisional Forest Officer and his staff those who are arrayed as co-accused persons along with the present petitioner entering into the residential premises of the opposite party No. 2 and taking away the house-hold articles can never be said to be an act done in discharge of his public duty. According to him, the petitioner was not accompanied by a Magistrate nor did he arm with a valid search warrant to enter into the residential premises of opposite party No. 2, because the search warrant reveals that the name of the present opposite party No. 2 was inserted at a subsequent stage. That apart, according to him, the question of sanction can be taken into consideration during trial and it is not a case in which all these aspects can be dealt with and disposed of in a proceeding u/s 482, Cr.P.C. This Court is conscious of the jurisdiction conferred upon it u/s 482, Cr.P.C. and also agrees with the submission of the counsel for the opposite parties that it is not the forum to scan the evidence and to decide whether a case as alleged has been made out against the petitioner or not. But certainly in a 482, Cr.P.C. proceeding, this Court has the jurisdiction to look at the facts and see prima facie whether on a bare reading of the F.I.R. and the materials collected by the Investigating agency either make out a case or on a bare perusal of the facts and circumstances whether protection u/s 197, Cr.P.C. is available to the accused ?

7. At this stage, I may refer to the scheme of Section 197 of the Code of Criminal Procedure, which reads as follows :

"197. Prosecution of Judges and public servants -- (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction -

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government offence:

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government :

Provided that where the alleged offence was committed by a person referred to in Clause (b) during the period while a proclamation issued under Clause (1) of Article 356 of the Constitution was in force in a State, Clause (b) will apply as if for the expression State Government occurring therein, the expression Central

Government were substituted.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of Sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3-A) Notwithstanding anything contained in Sub-section (3), no Court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a proclamation issued under Clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a proclamation issued under Clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the Court to take cognizance thereon.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held :

8. Section 197 of the Code of Criminal Procedure offers a protection to a Judge or a Magistrate or a public servant not removable from his office save by or with the sanction of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. No Court shall take cognizance of such offence except with the previous sanction of the Central Government or State Government as the case may be. The object of the Section is to save the official from malicious proceedings.

9. In the decision reported in (1990) 16 OCR (SC) 530 (N. K. Ogle v. Sanwaldas alias Sanwaimal Ahuja), the apex Court relied upon a constitution Bench decision of the said Court reported in 1995 (2) S.C.R. 925 (Matajog Dobey v. H.C. Bhari)

which lays down that where a power is conferred or duty is imposed by statute or otherwise, and there is nothing said expressly inhibiting the exercise of the power or the performance of the duty by any limitations or restrictions, It is reasonable to hold that it carries with it the power of doing all such acts or employing such means as are reasonably necessary for such execution, because it is a rule that when the law commands a thing to be done, it authorises the performance of whatever may be necessary for executing its command. The Court was considering in the said case the allegation that the official authorised in pursuance of a warrant issued by the Income Tax Investigation Commission in connection with certain pending proceedings before it, forcibly broke open the entrance door and when some resistance was put, the said officer not only entered forcibly but tied the person offering resistance with a rope and assaulted him mercilessly causing injuries and for such act a complaint had been filed against the concerned public officers. The Court, however, came to hold that such a complaint cannot be entertained without a sanction of the competent authority as provided u/s 197, Cr.P.C.

10. All the above decisions were taken into consideration by this Court, while dealing with the case of Arun Kumar Sarangi Vs. Madan Pattnaik and Others, and in the case of Sanjeeb Kumar Marik Vs. Bal Gopal Mishra and another, From the above judicial pronouncements, it is clear that before coming to a conclusion regarding the applicability of the provisions of Section 197, Cr.P.C., the Court must come to a conclusion that there is a reasonable connection between the act complained of and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable claim that he did it in the course of the performance of his duty.

11. In order to find out as to what is the true and correct meaning of the phrase "acting or purporting to act in the discharge of his official duty". Courts have considered different situations and no hard and fast rule has been laid down.

12. Now in the case at hand, it has to be seen whether in the particular facts and circumstances of the case, the petitioner is entitled to the protective umbrella available u/s 197, Cr.P.C. It is not disputed that the petitioner cannot be removed from his office except by or with the sanction of the State Government or the Central Government, as the case may be.

13. On a bare perusal of the protest petition, the F.I.R. and the statements of the witnesses recorded u/s 202, Cr.P.C. it reveals that the petitioner with the other accused persons had been to the residential premises of the complainant-opposite party No. 2, conducted the raid and seized certain forest materials i.e., about 37.27 sft. of timber the details of which are given in the seizure list. The petitioner along with other forest officials were present at the time of seizure. It further reveals that opposite party No. 2 was arrested and subsequently released on bail. But this fact was disputed by the opposite party No. 2 stating that he had not furnished any bail bond, but the present petitioner took some signatures on blank papers, which were later on utilised as the bail bond and P.R. The theory

of blank paper so advanced by opposite party No. 2 is not believable on the face of the narration of facts made in the F.I.R. which reveals that the present opposite party No. 2 is quite a law-knowing man who had drawn the attention of the forest authority regarding his right during arrest in the light of the decision of the Supreme Court. Being a prudent man having knowledge of law was not expected to commit blunder like giving signatures on the blank papers. The above story of blank paper advanced by opposite party No. 2 is totally unbelievable so also the story of taking away the ornaments and old furniture as their is nothing to disbelieve the seizure list prepared in course of search and seizure.

14. In the facts and circumstances of the case though there might be some excesses, but the action alleged cannot be said to be taken by the present petitioner not in discharge of his official duty.

15. For the reasons aforesaid, the petitioner is entitled to the protection u/s 197, Cr.P.C. The requirement of obtaining sanction for his prosecution being mandatory and admittedly no sanction having been taken, the impugned order taking cognizance against the petitioner cannot be sustained.

16. The order of the learned Magistrate taking cognizance of the offence is bad and is accordingly set aside.

17. The Criminal Misc. Case is accordingly allowed.