

(1988) 05 OHC CK 0001
In the Orissa High Court
Case No : Criminal Revision No. 78 of 1983

Prana Krushna Behera

APPELLANT

Vs

Nimai Charan Das

RESPONDENT

Date of Decision : 02-05-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
Penal Code, 1860 (IPC) — Section 341, 385

Citation : (1988) 66 CLT 238

Hon'ble Judges : D.P. Mohapatra, J

Bench : Single Bench

Advocate : S.P. Misra, for the Appellant; Debasis Panda, on behalf of B. Panda, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—The Petitioner, Pranakrushna Behera and one Bhikari Charan Behera, who is since dead were charged u/s 341/385, Indian Penal Code for wrongful restraint and extortion on the allegations, inter alia, that on 26-5-1978 at about 10 P. M. they forcibly restrained the complainant, Nimai Charan Das, near Kasibazar Chak when he was returning home from the residence of his Advocate abused him and forced him at the point of a knife to sign on a blank paper. On hearing the hulla raised by Nimai Charan Das, the witnesses arrived at the spot and on seeing them both the culprits fled away. It was further alleged that by the date of the occurrence a proceeding u/s 145 Criminal Procedure Code was pending between the complainant and relations of the accused persons. The complainant did not accept the suggestion for compounding the said proceeding for which the accused persons resorted to the high handed action in order to obtain his signature on a piece of blank paper which could be utilised for the purpose of compounding the proceeding. On these allegations the complaint case bearing No. ICC 294 of 1978 was initiated against the accused in the court of the Judicial Magistrate, First Class, Cuttack.

2. Both the accused persons pleaded not guilty. Accused Prana Krushna Behera took the plea that on the date of occurrence he was on duty and the case was falsely filed against him due to enmity arising out of previous litigation. During pendency of the case before the learned Magistrate, Bhikari Charan Behera died and the case against him abated.

3 Accused Prana Krushna Behera was found guilty under both the aforementioned charges and was sentenced to pay a fine of Rs. 50/-, in default rigorous imprisonment for two weeks, u/s 341, Indian Penal Code and Rs. 250/-, in default rigorous imprisonment for one month, u/s 385, Indian Penal Code On appeal, the learned Addl. Sessions Judge, Cuttack acquitted Prana Krushna Behera of the charge u/s 385, Indian Penal Code, but upheld the conviction and sentence u/s 341, Indian Penal Code He has filed this revision petition challenging the said order of the appellate court.

4. Sri S. P. Mishra, learned Counsel for the Petitioner contended that the case of the complainant as stated in the complaint petition and also in the evidence showed that the allegations in respect of the two charges were closely intertwined with each other and the lower appellate court having disbelieved the complainant's case regarding the offence u/s 385 I.P.C. ought not to have convicted the accused u/s 341, Indian Penal Code Sri Debasis Panda, learned Counsel for the opposite party however supported the order of the appellate court.

5. As noticed earlier the case of the complainant was that with a view to get his signature on a blank paper which was intended to be used against him in the proceeding u/s 145, Criminal Procedure Code the accused persons obstructed him on the road, threatened him, abused him and wanted him to Sign on the blank paper. But before doing so he raised alarm and hearing the same the witnesses reached the spot and on seeing them the accused persons fled away from the place. This case of the complainant is repeated in his deposition in the court.

The learned Sessions Judge while disbelieving the case of the complainant regarding the offence u/s 385, Indian Penal Code observed as follows:

Since the accused persons had left the place before any thing could be delivered or the complainant was made to part with valuable security, it cannot be said that an offence u/s 385 I.P.C. is made out. It also does not appear from the evidence of P.Ws. 1 to 4 that an attempt to commit extortion has been proved. The story of the complainant that the accused persons wanted to take his signature on a blank paper so as to utilise the same in a proceeding u/s 145, Criminal Procedure Code do not inspire confidence. Therefore, on a reading of the evidence of P.Ws. 1 to 4. I am unable to agree with the learned trial court that an offence u/s 385, Indian Penal Code has been made out against the Appellant. The Appellant is, therefore, entitled to be acquitted of this charge.

It is thus clear that the lower appellate court disbelieved the statements of P.Ws.

1 to 4 regarding a part of the complainant's case. From the case made out in the complaint petition and the evidence it is clear that attempt at extorting the signature of complainant on the blank paper was the very foundation on which the case of the complainant was built. The entire occurrence according to the averments in the complaint petition took place with this end in view. But these witnesses have narrated the entire case with meticulousness and exactitude, thus rendering their evidence highly improbable and therefore unreliable. It is not safe to base the conviction on such evidence.

In such circumstances when the lower appellate court disbelieved a part of the complainant's case holding that from the evidence of P.Ws. 1 to 4, it does not appear that an attempt to commit extortion has been proved, on the statement of very same witnesses, he was not right in upholding the conviction under section. 341, Indian Penal Code. Indeed, the case of the complainant and the statement of the witnesses regarding the two offences are so inter-mingled and inter-twined that it is not possible to separate the two, rejecting one part and occupying the other, Further, it appears from the evidence of the complainant that the witnesses P.Ws. 2 to 4 did not witness the first part of the occurrence since they reached the spot only on hearing the alarm raised by him as soon as they reached the spot, the accused persons fled away from there. Therefore, the finding of the lower appellate court that the charge u/s 341, Indian Penal Code was established against the Petitioner was clearly erroneous.

6. Accordingly, the revision petition is allowed, the order of conviction and sentence passed by the lower appellate court is set aside and the Petitioner is acquitted of the charge u/s 341, Indian Penal Code.