

(2000) 03 OHC CK 0004

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 4973/99

Pratima Behera

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-03-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204, 302, 319, 34

Citation : (2000) 1 OLR 567

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : D.P. Patnaik and S.N. Biswal, for the Appellant; R.K. Pattnaik, A.S.C. for Sole O.P., for the Respondent

Final Decision : Allowed

Judgement

P.K. Tripathy, J.—Heard.

2. This application u/s 482, Cr.P.C is disposed of at the stage of hearing on admission with active participation of both the parties.

3. Petitioner is the informant in G.R. Case No. 18/99 pending in the Court of S.D.J.M.. Jagatsinghpur arising out of Jagatsinghpur P.S. Case No. 1 3/99. The offences alleged are under Sections 302/34. I.P.C Petitioner filed an application in the Court of S.D.J.M.. to issue process against opp. party Nos. 2 and 3. Learned S.D.J.M. rejected that prayer vide the impugned order dt. 22.9.1999 on the ground that after taking cognizance of the offence and issuing process against the charge-sheeted accused persons he was functus officio to exercise further power to issue process to any other persons. He was also of the view that exercising such power is only available u/s 319. Cr.P.C. and that to by the trial Court.

4. As rightly argued by the learned counsel appearing for the petitioner and correctly conceded by the Addl. Standing Counsel appearing lot the State, learned S.D.J.M. misconceived the position of law and passed a wrong order.

After submission of charge-sheet, it is the duty of the Magistrate to peruse the case diary and to find out against whom he is to issue process. In other words, at that stage he is to find out if a prima facie case is made out against any person and accordingly he is to issue process if he finds prima facie materials to proceed against any other person besides the charge-sheeted accused persons, then that order of the Magistrate is not in exercise of the power u/s 319, Cr.P.C. but such order is one u/s 204, Cr.P.C. Thus, if the learned cognizance-taking Magistrate finds that prima facie case exists against some more persons other than the charge-sheeted accused persons, he should issue process to them to face the trial. That being the position of law, the impugned order is set aside and the learned S.D.J.M. is directed to peruse the case diary and to pass appropriate order in accordance with law. In other words, if the learned S.D.J.M. shall find that there are sufficient materials to proceed against opp. party Nos. 2 and 3 Udhaba and Kailash then he may issue processes to them.

5. The Criminal Misc. case is allowed accordingly.