

(2004) 07 OHC CK 0003
In the Orissa High Court
Case No : CRLMC No. 204 of 2002

Purna Chandra Sahu and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-07-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 204, 482

Citation : (2004) 29 OCR 261

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

Bench : Single Bench

Judgement

P.K. Tripathy, J.—Heard further argument from Learned Counsel for the Petitioner, Learned Counsel for the complainant-opposite party and learned Standing Counsel representing the State and this application u/s 482, Code of Criminal Procedure stands disposed of in the following manner.

2. Petitioners were before this Court in Criminal Misc. Case No. 3744 of 2000. In that proceeding they had challenged to the order of cognizance dated 18.8.1999 passed by the Sessions Judge-cum-Special Judge, Cuttack in I.C.C. No. 9 of 1998. In view of the ratio in the case of Gangula Ashok and Anr. v. State of A.P. (2000) 18 OCR (SC) 364, this Court found the act of the Special Judge in taking cognizance without the order of commitment was without jurisdiction. Accordingly, on 17.11.2000 this Court disposed of the Criminal Misc. Case No. 3744 of 2000 with the following direction:

5.17.11.2000:

xxx Under such circumstance, learned Special Judge, Cuttack is directed to send the case to the J.M.F.C., Baramba, who, after fresh perusal of the statement of the witnesses and recording the statements of any other witnesses if examined by the complainant, shall consider the question of taking cognizance and issue of process against the accused persons. Petitioners state that they shall not claim prejudice for any irregularity in the procedure if that mode is adopted for perusal

of the statement u/s 202, Code of Criminal Procedure by learned J.M.F.C. Baramba. It is also made clear to learned J.M.F.C. Baramba that he is to make an independent assessment of the statements of the witnesses and to pass appropriate order and not to be influenced by anything stated in the order dated 18.8.99 of the learned Special Judge, Cuttack in I.C.C. No. 9 of 1998.

The non-bailable warrant of arrest issued against the Petitioners shall stand recalled until learned J.M.F.C. Baramba pass appropriate order regarding cognizance of the offence and issue of process and thereafter matter relating to appearance shall be guided by the order which shall be passed by learned Magistrate.

3. Pursuant to the above order, on 15.12.2000 learned Judge in-charge of the Court of the Special Judge made over the case to the Court of J.M.F.C., Baramba. On receipt of the record, learned J.M.F.C. issued notice to the complainant as well as the accused persons (mentioned in the order sheets as both parties). On 19.11.2001, the complainant appeared and thereafter learned J.M.F.C. passed the following order:

19.11.2001: - Complainant present in the Court today and files power through Advocate Sri S. Nayak which is accepted. This case was filed before Special Judge, Cuttack which was transferred to this Court for complainant as per order dt. 15.12.2000 of Special Judge, Cuttack. Cognizance has already taken on 18.8.99 by Special Judge. Hence issue summons to the accused persons fixing 18.12.2001 for appearance. Complainant to file requisites within 3 days. Sd/- J. Acharya, J.M.F.C.

4. Petitioners ventilate their grievances against that order on the ground that the aforesaid order in issuing process u/s 204, Code of Criminal Procedure is in the breach of the above quoted directions of this Court and therefore that order be quashed.

5. Learned Standing Counsel appearing for the opposite party No. 1 State does not dispute to the contention of the Petitioners regarding non-compliance of the aforesaid directions of this Court by learned J.M.F.C., Baramba. He states that learned J.M.F.C. may be directed to comply with the directions issued by this Court in Criminal Misc. Case No. 3744 of 2000.

6. Learned Counsel for the complainant-opposite party No. 2, however, states that cognizance of the offence having already been taken by the Special Judge, therefore, learned Magistrate was not wrong in issuing the process. He, however, does not reply to the aforesaid argument of the Petitioner and learned Standing Counsel relating to the breach of the directions issued by this Court in Criminal Misc. Case No. 3744 of 2000. He, however, agrees to the suggestions given by the learned Standing Counsel as an alternative.

7. Regard being had to the facts and circumstances involved in this case, this Court finds that learned J.M.F.C., Baramba, for the reasons best known to him,

has ignored to take note of the order and direction passed by this Court in Criminal Misc. Case No. 3744 of 2000, which not only amounts to insubordination but also may amount to contempt of Court. Therefore, at the first instance, Registry shall do well to call for a report from the concerned Judicial Officer, who passed the impugned order dated 19.11.2001 as the J.M.F.C., Baramba, and to place the same for due consideration. A copy of this order be sent to the learned Judicial Officer for information. He be directed to submit his report within thirty days from the date of receipt of the intimation.

8. Be that as it may, while not expressing any opinion on the merit of the claim made by the Petitioners regarding absence of prima facie case, this Court quashes of order dated 19.11.2001 of the J.M.F.C., Baramba passed in I.C.C. No. 9 of 1998 and directs learned J.M.F.C., Baramba to comply with the above quoted directions made on 17.11.2000 in Criminal Misc. Case No. 3744 of 2000. He should bear in mind that he is free to take decision on perusal of the statements and/or recording statement of further witnesses, if produced by the complainant, and providing opportunity of hearing to the complainant. At such stage the accused has no locus-standi to participate and it is not necessary for learned Magistrate either to notice or hear the accused-petitioner. He should also take note of the fact that any action taken by him relating to the complaint of the opposite party No. 2, it must be strictly in accordance with law. Therefore, the impugned order of process issued against the Petitioners be not pursued any further. After passing appropriate order on cognizance, learned J.M.F.C. is to proceed with the case in accordance with law.

9. Send back the L.C.R. to the Court below immediately.