
(2009) 08 OHC CK 0046
In the Orissa High Court

Rabindranath Satpathy

APPELLANT

Vs

Hina Sethy

RESPONDENT

Date of Decision : 17-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 202
Penal Code, 1860 (IPC) — Section 218, 294
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 4

Citation : (2009) 108 CLT 694 : (2010) CriLJ 60 : (2009) 2 OLR 643 : (2011) 7 RCR(Criminal) 1029

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

Bench : Single Bench

Judgement

B.P. Ray, J.—Petitioner assails the order dated 19.1.2004 passed in I.C.C. No. 28/2002 wherein the learned S.D.J.M., Chhatrapur has taken cognizance of the offences under Sections 218/294 I.P.C. and Under Sections 3(1), (ix), (x), (xv), 3(2), (vi), (vii) and 4 of the S.C. & S.T. (P.A.) Act, 1989 and issued process against the petitioner.

2. It is alleged that on 11.10.2002 while the complainant-opposite party was engaged in grazing his cattle, he was abused and assaulted by some of his villagers. Petitioner was the Officer-in-charge of Hinjili Police Station at the relevant time. In order to lodge complaint, the complainant went to Hinjili P.S. and met the petitioner. The petitioner, however, did not entertain the complaint, on the contrary, complainant (opp. party) was arrested and forwarded to the Court and on the basis of which, G.R. Case No. 376/2002 was initiated. After release, the complainant-opp. party filed a complaint case against the petitioner and four others and the learned Magistrate after conducting enquiry u/s 202, Cr.P.C. took cognizance of the offences as aforesaid. The petitioner challenges the said order on the ground that he being a public servant cannot be prosecuted without a valid sanction.

3. Admittedly, the petitioner was the Officer-in-charge, Hinjili P.S. and as such,

he was a public servant at the relevant time. Petitioner is entitled to the protection u/s 197 Cr.P.C. provided, it is found that he was engaged in the performance of his official duties and the act or omission alleged against him has any reasonable nexus with discharge of his duty. It is well settled in law that in order to extend the protection given to the public servant u/s 197 Cr.P.C., it is to be seen as to whether the alleged act committed by the public servant is reasonably connected with the discharge of his official duty. At the same time, if the public servant is under any legal obligation to do certain act and he omitted or neglected to do the same, he cannot claim the privilege. In this regard the apex Court has clarified the position that Section 197 Cr.P.C. needs to be construed strictly while determining its applicability to any act or omission in the course of service. (See State of Orissa through Kumar Raghvendra Singh and Others Vs. Ganesh Chandra Jew,).

4. Applying the above principle enunciated by the apex court, the allegations levelled against the petitioner need to be scrutinized to determine as to whether the petitioner is entitled to legal protection to save himself from the culpability of the offences for which the cognizance has been taken.

5. The case of the complainant-opposite party is that on 11.10.2002 while he was engaged in grazing his cattle, accused persons came there, abused him in filthy languages, assaulted and threatened him as to why he has lodged complaint against them. He shouted for help. Villagers came there and rescued him. The complainant went to the Hinjili Police Station along with the other witnesses to lodge F.I.R. against the culprits/wrong doers. It is alleged that the petitioner did not entertain the FIR, rather abusing the complainant, he torn the same.

6. There is no semblance of doubt that the accusation of the complainant that he was abused and assaulted by the accused Nos. 1 to 4 in the complaint petition constitutes cognizable offences. When a person is assaulted and consequently received injuries and goes to the police station to lodge FIR, it is the bounden duty and statutory obligation on the part of the police authority to accept the same and investigate into the matter. The Officer-in-Charge of the Police Station cannot refuse to accept the complaint, if it discloses cognizable offence. The allegation disclosed in the complaint petition regarding the assault and injuries received thereby was required to be investigated. Refusal to receive the FIR and to tear it in front of the complainant can in no stretch of imagination be considered as official duty; rather it was a serious lapse on his part. No Police Officer can refuse to receive any complaint. This has been deprecated by the apex Court in the cases of Parkash Singh Badal and Another Vs. State of Punjab and Others, and Lallan Chaudhury and Ors. v. State of Bihar and Anr. (2006) 12 SCC 229. Heavy duty has been cast on the police authority to record information which reveals cognizable offence. Omission or neglect to discharge the said duty would jeopardize the administration and in dispensation of justice. In the State, where rule of law prevails, a public servant, in charge of law and order, cannot

refuse or neglect to discharge his statutory duty and at the same time to refuse under the law is to shield himself from the legal consequence. The accused by refusing to record the information has not only omitted or neglected to perform his official duty, but also thereby facilitated an offender to escape from the criminal liability. In such circumstances, the benefit of statutory provision u/s 197 Cr.P.C. cannot be pressed into service.

7. In the facts and circumstances of the case, I am not inclined to interfere with the proceedings and the order passed against the petitioner in I.C.C. No. 28 of 2002 by the learned S.D.J.M., Chhatrapur.

Accordingly, the CRLMC is dismissed.