
(2003) 01 OHC CK 0021

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 9449 of 2001

Raj Kishore Swain and Another

APPELLANT

Vs

Smt. Ranjana Moharana

RESPONDENT

Date of Decision : 08-01-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 482
Penal Code, 1860 (IPC) — Section 34, 380, 451, 506

Citation : (2003) CLT 770 (Suppl CrI) : (2003) CriLJ 2095 : (2003) 24 OCR 535 : (2003) 1 OLR 284

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

Bench : Single Bench

Final Decision : Allowed

Judgement

P.K. Tripathy, J.—Heard further argument. Hearing is concluded and judgment is as follows :--

2. This application u/s 482, Cr. P. C. has been filed by the petitioners with the prayer to quash the order of cognizance passed on 2-1-2001 in I.C.C. No. 44 of 2000 by learned S. D. J. M. Bhubaneswar. It reveals from the complaint that allegation has been made against the petitioners complaining of the offence of looting the properties from the house which includes sized woods, wooden furniture, cash and the machinaries for carpentry and sawing and in that process exhibiting indecent conduct to the complainant who is the wife of the owner of that premises. After receipt of the complaint, learned Magistrate directed for investigation u/s 202, Cr. P. C. by the local Police and after receipt of the report which went against the petitioner, he conducted an inquiry by himself, examined the complainant's witnesses and on 2-1-2001 passed the impugned order taking cognizance of the offence under Sections 451, 380, 506/34, I.P.C. Accordingly, learned S. D. J. M. issued process against the petitioners u/s 204, Cr. P. C. Resisting to that action of learned S. D. J. M., Bhubaneswar, petitioners claim protection u/s 197, Cr. P. C. on the ground that they were the two Forest

Range officers and their lawful act of conducting raid, search and seizure of illegal timbers, sawn woods and implements for sawing and carpentry has resulted in institution of the aforesaid false complaint with a view to malign and harass them.

3. Certain facts which are not in dispute at the Bar is that on 15-1-2000 i.e., the date of occurrence these two officials along with police force and the Magistrate had conducted a raid and seized woods and sawing materials, implements etc. and at that stage they suffered stiff opposition and violent conduct from the people of that locality and because of that the FIR lodged by petitioner No. 2 was registered as G. R. Case No. 147 of 2000 and a charge-sheet under Sections 148, 149, 387, 427, 336/294, I.P.C. has been filed against some of the co-villagers of the complainant who is the opposite party in this case.

It is also not in dispute that both the petitioners, being the Range Officers, appointed and working under the State Government and they are removable from service with the sanction of the State Government.

4. In course of hearing some doubt was entertained by opposite party regarding registration of any case u/s 56 of the Orissa Forest Act relating to confiscation of the seized articles with respect to the seizure which was made on 15-1-2000 resulting in the alleged occurrence. Mr. Misra, learned Addl. Government Advocate, in that respect has obtained the relevant records and instruction and referring to that he states that a P. R. has been registered as O.R. No. 36 of 2002-03 under Saw Mill and Saw Pits Control Act, 1991 so also a proceeding u/s 56 of the Forest Act by the D. F. O. Chandaka Wild Life Division for confiscation of those seized articles.

5. On the basis of the aforesaid facts scenario while learned counsel for the petitioners argues for grant of protection to the petitioners by extending the benefit u/s 197, Cr. P. C. and quashing the impugned order of cognizance because of want of sanction from the State of Orissa, Mr. Mohapatra, learned counsel for the opposite party argues that the act complained against the petitioners having no connection with the duty assigned to be discharged they are not entitled to the protection u/s 197, Cr. P. C. at this stage of the criminal proceeding. He further argues that at the stage of trial if the petitioners would be able to substantiate their plea then the question of want of sanction may be appropriately adjudicated by the trial Court with due reference to the evidence on record.

Petitioners refer to and rely on the cases of Abdul Wahab Ansari Vs. State of Bihar Another, , Gauri Shankar Prasad Vs. State of Bihar and Another, and Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhushan and Others, The opposite party similarly refers to and relies on the cases of P.K. Pradhan Vs. The State of Sikkim represented by the Central Bureau of Investigation, and Raj Kishor Roy Vs. Kamleshwar Pandey and Another, .

6. Each of the above cited cases have been decided according to the facts and

circumstances involved in such cases by interpreting the provision of Section 197, Cr. P. C. and considering the stage at which that provision should be applied. The above cited authorities are unanimous in their Lordships' opinion on the legal dictum that the provision in Section 197, Cr. P. C. can be invoked at any stage of the proceeding from the stage of cognizance till the conclusion of the trial and even in the appellate Court.

7. Provision in Section 197, Cr. P. C. is applicable if: (1) the accused of the alleged crime was a public servant who is removable from his office only with the sanction of the Government, be it State Govt. or the Central Govt.

(2) the offence alleged must have been committed by such accused while acting or purporting to act in the discharge of his official duty.

The object of Section 197, Cr. P. C. therefore is with a view to guard against vexatious proceeding against the categories of persons covered by the provision in Section 197, Cr. P. C. so as to secure the opinion of superior authority whether it is desirable that there should be a prosecution against the complained officer for the alleged act which has been described as a crime. The sine qua non for attracting the provision u/s 197, Cr. P. C. must stand the test that the nexus between the discharge of the public duty and the offending act or the omission must be inseparable. Undoubtedly the reason for grant of such a protection is to balance the public good and efficiency and the performance of the public duty by a public servant without fear or favour and without having the horror of harassment and victimisation. Therefore, to save public officers from vexatious proceedings the protection wall of sanction has been provided. A Magistrate taking cognizance of an offence has to see if that protection is available to the accused officer. As noted above, such a plea can be entertained and considered by a Court at any stage of the proceeding, starting from the stage of taking cognizance till the conclusion of the trial.

8. The procedural law in the Code of Criminal Procedure, 1973 is certain in the matter of procedure that at the stage of taking of cognizance, Magistrate is supposed to remain confined to the materials on record and to pass appropriate order either taking cognizance or refusing to take cognizance. In this case, when the complaint was instituted, learned S. D. J. M. did not think it proper to direct for an investigation u/s 156(3), Cr. P. C. On the other hand, he directed for an investigation in accordance with Sub-section (1) of Section 202, Cr. P. C. After receipt of that report, learned S.D.J.M., for no reason explained, wanted to conduct an inquiry by himself and directed the complainant to produce her witnesses. As it appears, there may be a flaw in that manner of dealing with the case, but in that respect since nothing has been raised at the Bar, therefore this Court does not propose to go into that question and the legality or illegality in the procedure adopted by learned S. D. J. M. The fact remains that in their statements the complainant and the witnesses made allegation against the petitioners complaining about the act noted in the complaint, and perusing the same learned S. D. J. M. passed the impugned order of cognizance. At that stage

the fact that the petitioners were on official duty as per direction of the superior officers, the fact that a police party had accompanied to conduct a raid along with a Magistrate being present at the spot are the relevant circumstances which were available to the S. D. J. M. from the report u/s 202(1), Cr. P. C. Submitted by the O. I. C. of Chandaka Police-station. Learned S. D. J. M. perused that report at the stage of taking cognizance on 25-9-2000, but his order is conspicuously silent about the substance of that report and if sanction u/s 197, Cr. P. C. was required or not required to proceed against the petitioners. The impugned order would not have been subject to criticism and adverse comment for taking cognizance if such a report from the police would not have been available to him for consideration. When such a report was called for by himself and he perused the same, thereafter the action and order of learned S. D. J. M. in not applying his judicial mind to the implication arising from that report vis-a-vis Section 197, Cr. P.C., certainly discloses non-application of mind to the legal requirements while considering the matter of cognizance.

9. Section 190 and Section 197 appear in Chapter XIV of the Code of Criminal Procedure, 1973. Section 190 authorises for cognizance of offences by Magistrates. That Section in Sub-section (1) starts with the language that "Subject to the provisions of this Chapter..... may take cognizance of any offence." Therefore, it was not within the discretion of learned S. D. J. M. to bypass requirement of law in Section 190(1) Cr. P. C., read with Section 197 and to pass the impugned order of cognizance without considering whether there exists prima facie circumstance to seek for sanction before passing order u/s 190(1) Cr. P. C. Of course it was open to him to consider and not to accept the report submitted by the police but that also he could not have done arbitrarily or whimsically. On the other hand if such report would have been considered and not accepted for reason indicated then the impugned order could not have been found to be in violation of mandate in Section 190(1) read with Section 197, Cr. P. C.

10. The public record, i.e. the case record of G. R. Case No. 147 of 2000, the F. I. R. and the case diary therein and the records produced by learned Addl. Govt. Advocate from the office of the D. F. Cs. both at Puri and Bhubaneswar undoubtedly show that the contention advanced by the petitioners are substantially true and correct relating to the fact that they had gone to that area and the premises of the opposite party for the purpose of conducting a raid, to unearth the smuggled timbers and woods and also to seize sowing Implements and carpentry materials which were being illegally possessed and used without having any licence or permit. The duty performed by them has been made hazardous by instituting the impugned complaint with false allegation. Presence of police and Magistrate at the spot improbably, the allegation in the complaint regarding molestation showing of indecent conduct and looting from the premises of the opposite party by the petitioners. In addition to that, all that these two petitioners did was to conduct a raid in due discharge of their official duty and therefore their act is squarely protected u/s 197, Cr. P. C. and a

prosecution is not maintainable in the absence of sanction. When that being the prima facie evidence to take such a view it is not necessary to direct the petitioners to face a trial and lead evidence in support of the plea u/s 197, Cr. P. C. Two dutiful public officers need not be asked to suffer the agony of a criminal trial and harassment of producing defence evidence when the complainant has not obtained sanction to prosecute them. In the above context, this Court refers to and rely on the following passage from the case of Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhushan and Others, which has been followed with approval in the case of Abdul Wahab Ansari Vs. State of Bihar Another, that :--

""The legislative mandate engrafted in Sub-section (1) of Section 197 debarring a Court from taking cognizance of an offence except with a previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from his office save by or with the sanction of the Government touches the jurisdiction of the Court itself. It is a prohibition imposed by the statute from taking cognizance, the accused after appearing before the Court on process being issued, by an application indicating that Section 197(1) is attracted merely assists the Court to rectify its error where jurisdiction has been exercised which it does not possess. In such a case there should not be any bar for the accused producing the relevant documents and materials which will be ipso facto admissible for adjudication of the question as to whether in fact Section 197 has any application in the case in hand. It is no longer in dispute and has been indicated by this Court in several cases that the question of sanction can be considered at any stage of the proceedings."

(from para 23 at page 1532)

"The question of applicability of Section 197 of the Code and the consequential ouster of jurisdiction of the Court to take cognizance without a valid sanction is genetically different from the plea of the accused that the averments in the complaint do not make out an offence and as such the order of cognizance and/or the criminal proceedings be quashed. In the aforesaid premises we are of the considered opinion that an accused is not debarred from producing the relevant documentary materials which can, be legally looked into without any formal proof in support of the stand that the acts complained of were committed in exercise of his jurisdiction or purported jurisdiction as a public servant in discharge of his official duty thereby requiring sanction of the appropriate authority."

(from para 24 at page 1533)

11. For the foregoing reasons the order of cognizance in this case is bad in law and accordingly the same is quashed and the application u/s 482, Cr. P. C. is accordingly allowed.

Send back the L. C. R.

The records produced by learned Addl. Government Advocate be forthwith returned to him.