
(2003) 08 OHC CK 0031

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 602 of 2003

Rajat Kumar Das alias Dipu Das and Others

APPELLANT

Vs

Republic of India and Others

RESPONDENT

Date of Decision : 01-08-2003

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 6
Criminal Procedure Code, 1973 (CrPC) — Section 195, 340

Citation : (2003) CLT 1060 (Suppl CrI) : (2004) CriLJ 224 : (2003) 26 OCR 120 : (2003) 2 OLR 428

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : S.N. Mohapatra, P.C. Das, R. Rout, S.K. Mishra, P.K. Panda and B.P. Nayak, for the Appellant; S.K. Padhi, for the Respondent

Final Decision : Dismissed

Judgement

1. Relying upon Section 6 of the Commissions of Inquiry Act, 1952, a petition was filed before the learned Sessions Judge, Khurda at Bhubaneswar in S.T. No. 161 of 1999 and S.T. No. 53 of 2000 by the accused persons u/s 340, Cr. P.C. praying for drawing up prosecution against P.Ws. 3, 15, 36 and 39 for having deliberately given false evidence in the Sessions Trials. The said petition having been rejected by order dated 15-2-2003, the present Criminal Misc. case is filed.

2. The accused-petitioners are facing trial u/s 302, I.P.C. read with other sections for committing murder of Graham Stains and others. The Central Government by Notification had appointed Justice D. P. Wadhwa under the Commissions of Inquiry Act to inquire and report. The report was submitted and was placed before the Union Cabinet and was approved. According to the petitioners who are accused in the abovementioned Sessions cases, the aforesaid P.Ws. were also examined in the Wadhwa Commission and the statements made by them in Court are contradictory to the statements made before the Commission and according to Mr. Mohapatra, learned counsel for the petitioners, it is a fit case

where a proceeding should be initiated against the said witnesses for deliberately giving false evidence in Court.

3. For appreciating the arguments, Section 6 of the Commissions of Inquiry Act is quoted herein below :

"6. Statements made by persons to the Commission-- No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him, in any Civil or Criminal proceeding except a prosecution for giving false evidence by such statement :

Provided that the statement--

(a) is made in reply to a question which he is required by the Commission to answer, or

(b) is relevant to the subject matter of the inquiry."

4. Mr. Mohapatra putting emphasis on the sentence "except a prosecution for giving false evidence by such statement" appearing in Section 6 of the Act, supra forcefully submitted that as the aforesaid witnesses have given false evidence in Court as would be apparent on a comparison of their deposition, recorded in Court with the statement by them before the Wadhwa Commission, they are liable to be prosecuted.

5. It will be worthwhile to mention here that in fact, two petitions were filed by the accused-petitioners before the Sessions Judge, one u/s 311, Cr. P.C. to recall some witnesses for further cross-examination and the other, u/s 340, Cr. P.C. Both the petitions were disposed of by a composite order dated 15-2-2003.

6. Mr. Padhi, learned counsel appearing on behalf of the C.B.I. relying upon a decision of the Supreme Court in Kehar Singh and Others Vs. State (Delhi Administration), submitted that the contentions raised by Mr. Mohapatra are not tenable in law inasmuch as the words "except a prosecution for giving false evidence by such statement" would connote to the statement made in reply to a question which is required by the Commission to be answered or is relevant to the subject matter of inquiry. That being the clear position of law, any statement made by the petitioner before the Sessions Judge would not invite initiation of any prosecution u/s 340, Cr. P.C. Mr. Padhi further submitted that challenging the order dated 15-2-2003 passed by the learned Sessions Judge, Khurda earlier a Crl. Misc. case was filed by the present petitioners before this Court which was registered as Crl. Misc. Case No. 391 of 2003 and this Court by its Order dated 27-2-2003 disposed of the said criminal misc. case and as such, the present case for the self-same relief is not maintainable.

7. After hearing learned counsel for both the parties, I called for the records in Crl. Misc. Case No. 391 of 2003 which was admittedly filed by some of the petitioners. The prayer in the said petition reads as follows :

"xx xx the Hon"ble Court may be graciously pleased enough to admit the

aforesaid Crl. Misc. Case, to call for the records and after hearing the parties the Crl. Misc. case be allowed and the order of the learned Sessions Judge, Khurda at Bhubaneswar passed in S.T. Case No. 161 of 1999 and in S.T. Case No. 53 of 2000, dt. 15-2-2003 may kindly be quashed.

And the learned trial Court, may kindly be directed to recall the abovementioned witnesses for further cross-examination and learned trial Court may kindly be further directed to launch prosecution against the witnesses for giving false evidence after calling for the Commission Enquiry Report in the interest of justice.

The averments made in the said Criminal Misc. Case petition which was one u/s 482, Cr. P.C. would reveal that the petitioners apart from challenging the order passed by the learned Sessions Judge rejecting the petition filed u/s 311, Cr. P.C. filed by the petitioners also challenged the order rejecting the prayer for initiating proceeding u/s 340, Cr. P.C. against witnesses Nos. 3, 15, 36 and 39 who, according to the petitioners had given contradictory/false statements in Court during the trial. This Court while dealing with the aforesaid criminal misc. case disposed of the same on 27-2-2003. According to Mr. Mohapatra, perusal of the said order would clearly reveal that this Court had not expressed any opinion regarding the grievance of the petitioners for rejecting the petition for initiating a proceeding u/s 340, Cr. P.C. It is also submitted that even though there was a prayer in the Criminal Misc. Case to that effect, said prayer was not passed.

But then, if no relief is granted with regard to a prayer made in a petition, it would always be deemed that the said prayer has been rejected.

8. Be that as it may, without entering into the arena of controversy, let me also deal with the present petition on merits.

Section 6 of the Commissions of inquiry Act guarantees immunity to a witness. It clearly stipulates that a person making a statement in course of examination before the Commission, enjoys certain protection, inasmuch as no statement made by a person in course of giving evidence before the Commission shall subject him to, or be used against him, in an civil or criminal proceeding. This protection is guaranteed in order to create confidence on the person to speak truth nothing but the truth before the Commission and not to hide anything. At the same time, the person is also cautioned that taking advantage of such immunity if he makes a false statement before the Commission, he would be prosecuted. The "statement" as per Section 6 of the Act is explained to be a "statement" made in reply to a question which he is required by the Commission to answer. Perusal of Sections 145, 155 and 157 of the Evidence Act clearly indicates that a previous statement can only be used for contradiction or for corroboration. The restrictions imposed u/s 6 of the Commissions of Inquiry Act stipulating that a statement made by a person before the Commission cannot be used either for the purpose of contradiction in cross-examination of the said witness or for the purpose of impeaching his credibility, is aimed to protect the witness and to provide immunity to the said person.

9. This being the clear position of law, according to me, the Court below has not committed any illegality or irregularity in rejecting the petition filed by the petitioners for initiation of a proceeding u/s 340, Cr. P.C. I, therefore, decline to interfere with the said order and dismiss this Criminal Misc. Case.