

(2019) 01 OHC CK 0104

In the Orissa High Court

Case No : Criminal Misc. Case No.1455 Of 2010

Rama Chandra Pujari & Anr

APPELLANT

Vs

State Of Orissa & Anr.

RESPONDENT

Date of Decision : 29-01-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 91, 161, 173, 204, 227, 228, 397, 482

Indian Penal Code, 1860 — Section 34, 294, 323, 324, 447

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(x)

Citation : (2019) 01 OHC CK 0104

Hon'ble Judges : Dr. A. K. Mishra, J

Bench : Single Bench

Advocate : Sidheswar Mohanty, L.Pani, P.K.Mohanty, Karunakar Nayak

Final Decision : Dismissed

Judgement

Dr.A.K.Mishra, J

1. The question in singularity in this proceeding under Section 482 Cr.P.C. is whether the trial court at the stage of framing of charge under Sections

227 & 228, Cr.P.C. is to accept and assess the material placed by the defence.

This point emerged when the Sessions Judge-cum-Special Judge, Koraput, Jeypore vide order dated 22.3.2010 in C.T. No. 184 of 2009, declined to

accept the documents in support of the caste of the present petitioners who were accused persons and thereby discharged the accused persons of the

offence under Section 447/34 of the I.P.C. but ordered to frame charge in respect of the offences under Sections 294/323/324/34 of the I.P.C. and

under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short â??S.C. & S.T. (P.A.) Act?).

To put the facts simply, Opposite party no.2 Buduri @ Nila Khillo lodged an F.I.R. on 5.10.2005 alleging that both the petitioners in order to construct

a temple assaulted the informant and abused in filthy language causing annoyance. On such F.I.R. Koraput Town P.S. Case No. 134 dated 5.10.2005

under Sections 294/323/324/34 of the I.P.C. and Section 3(1)(x) of the S.C. & S.T.(P.A.) Act was registered. After completion of investigation

Charge Sheet was filed under Sections 294/323/324/447/34 of the I.P.C. and Section 3(1)(x) of the S.C. & S.T.(P.A.) Act, against both the

petitioners.

2. On 5.10.2009 learned S.D.J.M., Koraput took cognizance of the offences and issued process under Section 204 Cr.P.C. The said cognizance order

dated 5.10.2009 in G.R. Case No. 744 of 2005 was challenged before this Court under Section 482 Cr.P.C. in CRLMC No. 4147 of 2009 and vide

order dated 2.2.2010 the following order was passed:-

â??xx xx I am not inclined to accept the aforesaid contentions of the learned counsel for the petitioners at the present stage since the petitioners are at liberty to raise

their contentions at the time of framing of charge before the trial Court. If it is so raised, the same shall be considered by the concerned Court in accordance with law.

The CRLMC is disposed of.â??

3. AtÂ theÂ stageÂ ofÂ considerationÂ ofÂ charge,Â itÂ was contendedÂ byÂ theÂ accusedÂ personsÂ (presentÂ petitioners)Â that

they belonged to scheduled tribe community for which they did notÂ comeÂ underÂ theÂ purviewÂ ofÂ S.C.Â &Â S.T.Â (P.A.)Â Act.Â

To substantiate their stand, they filed caste certificate of one Rama Chandra Pujari, accused-petitioner No.1. Learned Special Court while refused to

discharge the petitioners from the offence under S.C & S.T. (P.A.) Act, did opine that â??at such stage, the defence has absolutely no scope to

file any material in support of the defenceÂ andÂ insistÂ uponÂ theÂ courtÂ toÂ considerÂ suchÂ materials placed by the defence in

order to balancing it with the prosecution material to ascertain the guilt or innocence of the accused, since such action of the court would

amount to pre-judging the evidence on merits before trial.â??

4. In this proceeding, learned counsel for the petitioners has filed the photo copy

of the ROR in the name of Haribandhu Pujari and caste certificate

No.1714 of 2005(Annexure-4 series) in favour of Smt. Neela Khillo-petitioner No.2 to contend that both the petitioners are the members of scheduled

tribe belonging to Paraja sub-caste and being a member of scheduled tribe, cannot be said to have committed offence under S.T. & S.C.(P.A.)

Act.

4(a) A key plank on the point of fact, as per the learned counsel for the petitioners is that the order of Special Court in discharging the accused

persons of the offences under Section 447/34 of the I.P.C. and ordering to frame charge under Sections 294/323/324/34 of the I.P.C. is not challenged

here. In other words, deletion of charge u/s. 3(1)(x) of S.C. & S.T.(A.P.) Act has been sought while allowing the case to continue for other offences

under Indian Penal Code.

5. Learned counsel for the petitioners submits that though the trial court is debarred from considering the materials filed by the defence at the time of

framing charge, in view of the order dated 2.2.2010 of this Court giving liberty to raise their contentions at the time of framing charge before the

trial court. If it is so raised, the same shall be considered by the concerned court in accordance with law. the Special Court was under obligation to

accept the documents filed by the defence and had committed error of law in ignoring the same. In support of his contention he relied upon the

decisions reported in AIR 2002 SC 564 Dilawar Babu Kurane Vs. State of Maharashtra, AIR 2000 SC 2583 State of Madhya Pradesh Vs. Mohan

Lal Soni and (2017) 66 OCR 622 Smt. Pratima Behera Vs. State of Orissa (Vig.)

6. Learned Additional Standing Counsel repelled the above contention stating that there was no direction from this Court to accept the material from

defence at the time of framing charge and in view of direction that if the contention raised, the same shall be considered in accordance with law, the

lower court is justified in not accepting the document as per the decision reported in (2005) 1 SCC 568 State of Orissa Vs. Debendra Nath Padhi. It

is further submitted that the Investigating Officer had collected material including the statements of witnesses to the effect that the present petitioners

were members of the General caste. In particular he pointed out the 161 Cr P.C. statement of one Chittaranjan Satpathy in which it is stated that

Haribandhu Pujari in respect of whom ROR is filed had sold some land claiming

himself to be the member of general caste â??Ranaâ?? by caste.

7. In Dilawar Babu case(supra) their Lordships found that all the materials produced by the prosecution against the accused were duly considered by the High Court and stated as follows:-

â??12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal

Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift

and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed

before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and

proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code

of Criminal procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the

total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the

evidence as if he was conducting a trial (See Union of India v. Prafulla Kumar Samal and another(1979(3) SCC 5).

7(a) In Mohan Lal Soni case, the lower court was directed by the High Court that the documents made available by the

accused during investigation be produced and may be taken into consideration by the court below while framing the charge and accordingly those

documents were considered as revealed from the following passage:-

â??12. From the decisions referred to in the same paragraph and the decisions already referred to above there was no bar to consider the material on record in the

case on hand, which was collected during the course of investigation and produced before the Court and particularly in view of the directions given earlier by the

High Court.â??

7(b) In Smt. Pratima Behera case of our own High Court, the Hon?ble Judge has referred to the decision of Amit Kapoor v. Ramesh Chander, reported in (2012) 9 SCC 460, whereinÂ it is held as follows:-

â??19. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the Court should exercise such jurisdiction. However, it is not only difficult

but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly with regard to quashing of charge either in exercise of jurisdiction under

Section 397 or Section 482 of the Code or together, as the case may be:-

XxxxÂ Â Â Â xxxx

12) In, exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for

reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed

with by the prosecution.â??

8. The first two decisions are distinguishable in the peculiar facts and circumstances of the present case, while the third one draws support from a decision of Hon?ble Supreme Court which is no way helpful to the petitioners.

9. The very issue qua the question was exhaustively canvassed and argued and definitive and final determination has been made in the decision

reported in (2018) 2 SCC 93, Nitya Dharmananda @ K.Lenin vs. Sri Gopal Sheelum Reddy, wherein it is stated as follows:-

â??7. In Debendra Nath Padhi, supra, it was observed:

â??25. Any document or other thing envisaged under the aforesaid provision can

be ordered to be produced on finding that the same is necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code. The first and foremost requirement of the section is about the document being

necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is

necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of

the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a

police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document

being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production

is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section

173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for

production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does

not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced

process may be initiated to compel production thereof.

8. In *Hardeep Singh Etc. versus State of Punjab and ors. Etc.* (2014) 3 SCC 92 a Bench of five-Judges observed:-

19. The court is the sole repository of justice and a duty is cast upon it to

uphold the rule of law and, therefore, it will be inappropriate to deny the existence of

such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating

and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get him-self absolved even at the stage of investigation

or inquiry even though he may be connected with the commission of the offence.â??

9. Thus, it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge sheet for dealing with the issue of

charge but if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not

debarred from summoning or relying upon the same even if such document is not a part of the charge sheet. It does not mean that the defence has a

right to invoke Section 91 Cr.P.C. de hors the satisfaction of the court, at the stage of charge.â??

10. It is not a fact that Investigating Officer had not directed investigation to ascertain the caste of the petitioners and police report and document

submitted therewith had not contained any such material. Further this Court had not directed in earlier Criminal Misc. Case No. 4147 of 2009 to

accept the documents filed by the defence at the time of consideration of charge. The ROR in the name of Haribandhu Pujari of which photo copy is

filed runs contrary to the statements recorded under Section 161, Cr.P.C. Because of this it cannot be said that the material which accused persons

had intended to file were of â??sterling? quality. The argument of learned counsel for the petitioners is pursued beyond a justifiable emphasis on what

the court has stated.

11. For the reasons stated above, it cannot be said that lower court had committed mistake in not accepting the documents filed by defence at the time

of consideration of charge. The impugned order does not suffer from any vice and for that any interference invoking jurisdiction under Section 482

Cr.P.C. is not warranted.

12. The CRLMC is dismissed.

13. The interim stay granted is vacated. The LCR be sent back. The trial court is directed to expedite the trial.

â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|