

(2012) 07 OHC CK 0022
In the Orissa High Court
Case No : CRLMC No. 661 of 2004

Ramakanta Sahoo

APPELLANT

Vs

Suresh Prasad Panda

RESPONDENT

Date of Decision : 12-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 482

Citation : (2012) 07 OHC CK 0022

Hon'ble Judges : Indrajit Mahanty, J

Bench : Single Bench

Advocate : S.R. Mulia, S.K. Parida, R.C. Moharana, M. Mulia and R.R. Nayak, for the Appellant; L. Pradhan, A.K. Pradhan, D.P. Das, N. Hota and K. Bera, for the Respondent

Judgement

I. Mahanty, J.—The present application u/s 482 Cr.P.C. has been filed by the petitioner-Ramakanta Sahoo with a prayer to quash the order dated 09.08.1996 passed in 1.C.C. Case No. 6 of 1996, by which order the learned S.D.J.M., Biramaharajpur has been pleased to take cognizance against the petitioner for the offence u/s 409/34, I.P.C. The essential ground of challenge by the petitioner, who was then working as Block Development Officer (B.D.O), is non-compliance of Section 197 Cr.P.C. Mr. S.R. Mulia, learned counsel for the petitioner submitted that on perusal of the complaint petition, it would be clear that the complainant was a resident of village Lumarjena and it was alleged that improvement of the village road was executed by the B.D.O. (petitioner herein) and Junior Engineer-Sk. Abdul Raif, who claimed to be in-charge of the said road improvements. It was further alleged that the present petitioner-B.D.O and the Junior Engineer acted in a negligent manner and alleging various irregularities in carrying out of such improvements of the village road for which the villagers had made complaint to the Sub-Collector claiming the said work of an inferior quality. It appears from the impugned order dated 09.08.1996 that the learned S.D.J.M., Biramaharajpur was pleased to take cognizance of offence u/s 409/34, I.P.C. against the petitioner and Junior Engineer.

Mr. Mulia further submitted that the petitioner (B.D.O) had no role in execution of the work in question since the road work was entrusted to the Junior Engineer-Sk. Abdul Raif, who had already received the payment of the said work. It was alleged that the complainant was neither a superior authority nor had entrusted the work to the petitioner. Therefore, the complainant could not claim to be an aggrieved person and had no locus standi to lodge the complaint against the petitioner.

Mr. Mulia, learned counsel for the petitioner further submitted that even if the petitioner had constructed the road in question of an inferior quality through the Junior Engineer that was in his official capacity and, therefore, sanction u/s 197, Cr.P.C was mandatory. In this respect, it is asserted that the objective of Section 197, Cr.P.C is extremely clear. He placed reliance upon the judgment of the Hon"ble Supreme Court in the case of Anjani Kumar Vs. State of Bihar and Another, , and the judgments of this Court in the case of Sri Debasis Panigrahi and Sri Satyajit Monanty Vs. State of Orissa and Another, and in the case of Sri Sankarsana Behera v. State of Orissa, (2011) 50 OCR 843.

2. Mr. L. Pradhan, learned counsel for the opposite party-complainant supporting the order of cognizance stated that carrying out of inferior work and thereby causing loss to public exchequer cannot come under the definition of official duty of such public servant. Therefore, sanction u/s 197 is not required. He further submitted that the petitioner was a beneficiary of the public work which was carried out by the Junior Engineer and the complainant being the beneficiary of such public road, has every right and locus standi to question to inferior work and any objection on the ground of lack of locus standi ought to be rejected.

3. Having heard learned counsel for both the parties, perusing the pleadings and on perusing the judgments relied upon by the petitioner referred to herein above, it appears that the scope and ambit of the protection granted u/s 197, Cr.P.C to a public servant, has repeatedly been reiterated by the Hon"ble Supreme Court in various judgments as well as in the case of Anjani Kumar (Supra). In the said case the Hon"ble Supreme Court came to hold that once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. It is further noted in the said judgment that if it is prima facie, found that the act or omission for which the accused was charged which has a reasonable connection with the discharge of his duty then it must be held to be official, to which applicability of Section 197, Cr.P.C cannot be disputed.

4. The aforesaid principle laid down by the Hon"ble Supreme Court was reiterated by a Division Bench of this Court in the case of Debasis Panigrahi (supra) as well as in the case of Sri Sankarsana Behera (supra) and the said issue is no longer res integra. It is revealed from the complaint petition that, although it was contended that the work carried out was inferior but the actual work was being carried out on a public road and the petitioner in his official

capacity was acting as executant "though the actual work has been carried out by the Junior Engineer".

Therefore, applying the principles laid down by the Hon"ble Supreme Court as well as the Division Bench of this Court in the cases referred to hereinabove, I am of the considered view that the impugned order of cognizance suffers from grave illegality since sanction u/s 197, Cr.P.C was mandatory in the instant case and the same had not been obtained prior to passing of order of cognizance.

Accordingly, the CRLMC is allowed and the order of cognizance dated 09.08.1996 passed in 1.C.C. Case No. 6 of 1996 by the learned S.D.J.M., Biramarajpur is hereby quashed.