
(2007) 02 OHC CK 0051
In the Orissa High Court
Case No : Crl M.C. No. 2585 of 2006

Ramananda ' Ram Mandal ' Rupsingh Naik	APPELLANT
Vs	
State of Orissa	RESPONDENT

Date of Decision : 23-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 248, 482

Citation : (2007) CLT 456 (Suppl Crl)

Hon'ble Judges : I. Mahanty, J

Bench : Single Bench

Advocate : Debi Prasad Dhal, S.K. Dash, A. Rath, K. Dash, P.K. Routray, B.S. Dasparida and A.K. Mishra, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

I. Mahanty, J.—This application u/s 482 Code of Criminal Procedure has been filed to quash the order of cognizance dated 2.6.1994 passed by learned S.D.J.M., Baliguda on the ground that no prima facie case is made out against the Petitioner and also on the ground that several co-accused persons who have already faced trial for the self-same allegations, have been acquitted.

2. Learned Counsel for the Petitioner Sri A. Rath submits that the continuance of the proceeding would be nothing but an abuse of the process of Court.

It would be evident from the F.I.R. annexed to the present application as Annexure-1, that the F.I.R. related to an incident which took place on 7.9.1993, wherein, it is alleged that some students and the public of Tumudibandha, including the Petitioner, obstructed the traffic on the road by putting logs in support of their demands regarding posting of teachers at their village school. It is further stated that as a result of such obstruction on the part of students and public of the village, more than 30 vehicles were stranded on the road and the mob also pelted stones at the vehicles and gheraoed the Circle Inspector of

Schools, Phulbani. It is further stated that after the A.P.R. force arrived along with the Executive Magistrate, the mob dispersed by setting fire to the Government buses, office jeeps and damaging private buses.

In the F.I.R., it is alleged that about 1000 people had gathered at the spot and pelted stones on the A.P.R. force, as a result of which, some police personnel as well as the informant sustained some injuries, on account of which, the Executive Magistrate promulgated the order u/s 144 Code of Criminal Procedure and ordered for lathi charge as well as use of tear gas shelling. Further, it is alleged that the mob became violent and, therefore, necessitated firing by the police resulting in the death of one person from amongst the members of the mob and after the incident subsided, the Executive Magistrate submitted a report and the same was treated as F.I.R. and the police registered the Tumudibandha P.S. Case No. 26 of 1993 against one Jambesh Mallick and 1000 persons (unnamed).

3. On the basis of the F.I.R., G.R. Case No. 295 of 1993 was registered in the Court of the S.D.J.M., Baliguda. During the course of investigation, the police recorded statements of some witnesses and arrested a number of accused persons, who were released on bail. It is alleged in the present application that the police being vindictive towards the accused persons entangled innocent villagers of the Panchayat and submitted charge-sheet against some of the accused persons showing the Ors. as absconders. The present Petitioner claims to be an innocent person who is shown as absconder in the charge-sheet submitted by the police.

4. The trial Court split up the proceeding and conducted trial of the case against the apprehended 71 co-accused persons and in course of the trial almost 36 witnesses are examined on behalf of the prosecution in order to substantiate the allegation made in the F.I.R. The trial Court considering the statements of the witnesses was pleased to find that the persons who faced trial are not guilty and accordingly, acquitted all the co-accused persons u/s 248 of the Code of Criminal Procedure vide judgment dated 4.9.1999 in G.R. Case No. 295 of 1993 (Annexure-4). On perusal of the judgment, it is clear from the statement of the informant, who was examined as P.W.9 that he has made an omnibus statement that the mob pelted stones causing damage to the vehicle and injury to him. No specific allegation was made against any of the accused persons. Apart from the informant all other prosecution witnesses similarly stated that the unruly mob had pelted stones but no specific person was named by any of the witnesses examined.

5. In view of the evidence gathered, in course of the split up trial, the learned Counsel for the Petitioner submits that there is absolutely no material on record to implicate the Petitioner with any of the alleged offences and since all the witnesses examined have collectively stated that they cannot identify any person in the mob, therefore, since no prima facie case is made out against the Petitioner, the cognizance and proceeding against him ought to be quashed. The order of cognizance and the continuance of the proceeding against him ought to

be quashed.

6. Learned Counsel for the Petitioner further submits that the Petitioner had no knowledge regarding the initiation of the case against him since he was serving at Mumbai and it is only after his returning from Mumbai, he learnt from some of the co-accused persons who have already been acquitted, that his name has also been implicated in the charge-sheet and had been shown as an absconder. Therefore, the Petitioner seeks to approach this Court u/s 482 Code of Criminal Procedure and submits that continuance of the proceeding against the present Petitioner would amount to abuse of the process of the Court and wastage of valuable time of the Court, since the chance of conviction is extremely bleak and there is no material against the Petitioner. Learned Counsel for the Petitioner submits that no fruitful purpose would be served in continuance of the proceeding and therefore, submits that the order of cognizance dated 2.6.1994 and consequential proceeding thereon ought to be quashed. In support of his contention, learned Counsel for the Petitioner has placed reliance on the case of Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others, in which the Hon''ble Supreme Court held that, where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may, while taking into consideration the special facts of a case, also quash the proceeding. Learned Counsel also placed reliance on the decision of the Hon''ble Supreme Court in the case of Central Bureau of Investigation v. Akhilesh Singh, 2005 (I) OLR (SC) 354, in which, the Supreme Court has held that once the main accused has faced trial and has been discharged and when that matter had attained finality, therefore, the discharge of the co-accused by the High Court holding that no purpose would be served in further proceeding with the case against co-accused and has held that the order of the High Court does not suffer from any illegality or perversity.

Learned Counsel also placed reliance on the decision of this Court, in the case of Kanhu Behera Vs. State of Orissa, , wherein it has been held that the power of quashing of cognizance is an inherent power vested u/s 482 Code of Criminal Procedure and can be invoked to quash an order of cognizance, involving non-compoundable offences where the principal accused has already been acquitted after a full fledged trial, continuance of the criminal proceeding against the Petitioner would be undoubtedly abuse of the process of Court.

Apart from the above, the learned Counsel for the Petitioner has also relied upon a decision of this Court in the case of Santosh Kumar Malty Vs. State of Orissa, , wherein the proceedings against the Petitioner who had been shown as an absconder were quashed since the son had faced the trial and had been acquitted, and therefore held that no purpose exists for the continuation of the trial.

7. Considered the submissions advanced by the learned Counsel for both the parties as well as the certified copy of the judgment filed under Annexure-4. In

paragraph-6 of the said judgment, the trial Court took note of the evidence deposed by P.W.9, the informant, from which, it is clear that some police personnel including himself sustained injuries due to pelting of stones but there is no evidence to suggest that the accused persons were members of that unruly mob. Not a single witness had identified any of the accused persons. Neither the independent nor the official witnesses including the injured personnel had raised their fingers against any of the accused persons. Thus, there was no evidence connecting the accused persons with the alleged crime. So, the accused persons were entitled for an acquittal.

The entire evidence narrated in the proceeding has been summarized in paragraph-6 of the judgment as noted hereinabove. From the nature of the allegations made and the evidence adduced, and since the F.I.R. was lodged against 1000 unnamed persons connected in the mob, I am of the view that no useful purpose would be served in continuance of the criminal proceeding against the Petitioner, since no specific overt act has been alleged against the present Petitioner and no nexus has been found between the present Petitioner and the alleged commission of offences. Therefore, I am of the view that no prima facie case has been made out against the present Petitioner for commission of the alleged offences and continuance of the criminal proceeding would amount to an abuse of the process of the Court and, therefore, it is a fit case in which jurisdiction u/s 482 Code of Criminal Procedure ought to be exercised. The interest of justice and equity would be best served if the proceeding in G.R. Case No. 295 of 1993 arising out of Tumudibandha P.S. Case No. 26 of 1993 against the present Petitioner is quashed and it is ordered accordingly.

The CRLMC is, thus, allowed.