

(1986) 07 OHC CK 0011

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 126 of 1984

Sarat Kumar Patnaik, Managing Director, Konark Television Ltd.

APPELLANT

Vs

New Haryana Transport Co.

RESPONDENT

Date of Decision : 29-07-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197(I), 202, 204, 482
Penal Code, 1860 (IPC) — Section 415, 418

Citation : (1986) 2 OLR 276

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

Bench : Single Bench

Advocate : J. Das, for the Appellant; Ashok Mohanty, for the Respondent

Judgement

K.P. Mohapatra, J.—In this petition u/s 482 of the Code of Criminal Procedure (hereinafter referred to as "Code") the petitioner has assailed the order passed by the learned Chief Judicial Magistrate, Cuttack, taking cognisance of an offence u/s 418 of the Indian Penal Code (hereinafter referred to as "IPC"), and has prayed for quashing the entire criminal proceeding.

2. The petitioner is the Managing Director of; Konark television Limited, whereas, the opp. party is a transport company. The opposite party through its Branch Manager of the branch office at Cuttack filed the complaint petition against the petitioner and alleged that it had transported and delivered goods to the petitioner vide consignment note No. 4447 dated 4.1. "1983" and consignment note Nos. 3694, 3695 and 3696 dated 8.3. 1983. The transport charge amounting to Rs. 15,700/- was not immediately paid for delivery of the goods, but the petitioner promised that the amount shall be paid later. But despite requests and correspondences, the petitioner did not make payment of the transport charge, but on the other hand intimated the opposite party by letter that the transport charge for the aforesaid consignments had been paid to M/s. Konark Transport Co. which, however, had no authority to receive such payment.

On 29. 7. 1983 another consignment of goods was ready for delivery by the opp. party on payment of the transport charge of Rs. 15,000/-. But the petitioner as on the previous occasion wanted to take delivery of the goods, but deferred payment of the transport charge. The opp. party, earlier having had the bitter experience with the petitioner, did not agree to the proposition, did not deliver the goods and stored the same in its godown at Cuttack. Later the opp. party sent the bill of Rs. 24,000/- which included the transport charge, as well as, godown rent, but the petitioner did not take delivery of the goods on making the payment. On the other hand, he submitted a false report at Madbupatna Police Station against the Branch Manager and an employee of the opp. party for offences Under Sections 204, 407 and 420. IPC, on the basis of which, G R. Case No. 2391 of 1983 was initiated and got them arrested. He also got the goods released in his favour. For doing so, the petitioner acted fraudulently and dishonestly. He also created false documents and used them as genuine. Therefore, the petitioner had committed offences Under Sections 195, 209, 211, 403, 405, 415, 417, 418, 420, 424, 463, 464, 468, 470 and 471, IPC.

3. On 3. 10. 1983 the learned Chief Judicial Magistrate examined the Branch Manager of the opp. party and directed a Judicial Magistrate to conduct inquiry under Sec. 202 of the Code. The learned Judicial Magistrate conducted the inquiry and submitted his report to the learned Chief Judicial Magistrate. By the impugned order dated 4. 1. 1984, the learned Chief Judicial Magistrate, on consideration of the report of the inquiry, took cognisance of art offence u/s 418, IPC, and directed issuance of process.

4. Mr. Jayant Das, learned counsel appearing for the petitioner, raised the following contentions :

1) The learned Chief Judicial Magistrate acted in wrongful exercise of jurisdiction in taking cognisance of an offence u/s 418, IPC, against the petitioner on the basis of an inquiry conducted by a judicial Magistrate u/s 202 of the Code.

2) Even assuming that all the allegations made by the opp. party in the complaint petition are true, no offence u/s 418, IPC, has been made out

3) The petitioner being a public servant not removable from his office save-by or with the sanction of the Government and is accused of an offence alleged to have been committed by him while acting in discharge of his official duty, cognisance of an offence u/s 418, IPC, should not have been taken without the previous sanction of the State Government as contemplated in Section 197(1) of the Code.

5. Before embarking upon discussion on the contentions raised, it would be useful to state the settled-principle of law with regard to exercise of inherent powers of the Court u/s 482 of the Code for quashing criminal proceedings. In R.P. Kapur Vs. The State of Punjab, , p. B. Gajendragadhar, J. (as His Lordship then was) spoke for the Court thus :

"...It is well-established that the inherent jurisdiction of the High Court can be

exercised to quash proceedings, in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged, in such cases no question of appreciating evidence arises, it is a matter merely of looking at complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the Criminal Court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise - In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence, which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction u/s 561-A, the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not that "is the" function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the "High Court's" inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated "that is the nature and scope of the inherent jurisdiction of the" High Court u/s 561-A to the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point".

(Section 561A of the old Code is identical to Section 482 of the Code).

6. In *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others*, identical

guidelines were given as to the circumstances in which the High Court shall quash a criminal proceeding. These guidelines laid down by the Supreme Court have been followed in this Court in several decisions. I will cite only two of them reported in 55 (1983) CLT 24 M/s. Lord Match Industries, through its partner Prafulla Mohanty Vs. Ashok Kumar Das, .

7. Mr. Jayant Das placed reliance on Omprakash Saha Vs. Manmohan Mohanty and Another, , and urged that as the impugned order passed by the learned Chief Judicial Magistrate based on a report of inquiry u/s 202 of the Code by a judicial Magistrate is illegal, so on this ground alone the Impugned order is liable to be quashed.

8. It is undisputed that on 3. 10. 1983 after examination of the Branch Manager of the opp. party, the learned Chief Judicial Magistrate directed a Judicial Magistrate to conduct inquiry u/s 202 of the Code. The learned Judicial Magistrate conducted the inquiry and submitted his report, whereupon, on 4.1, 1984 the learned Chief Judicial Magistrate passed the impugned order taking cognisance of an offence u/s 418, IPC, against the petitioner. In the case of Omprakash Sahu (supra) this Court held that an order u/s 102 cannot be passed entrusting a Judicial Magistrate to conduct an inquiry and such an inquiry report made by another Magistrate on the basis of an "order passed by the Sub-Divisional Judicial Magistrate would be invalid and the accused persons cannot be summoned on the basis thereof and as"such the impugned order summoning the accused persons is illegal and against the provisions of the Code. Such an order is liable to be quashed; The principle laid down in this decision has been consistently followed by this Court. Learned counsel appearing for the opp. party, Mr. Ashok Mohanty, did not dispute the legal proposition. Therefore, on this ground alone, the impugned order is liable to be quashed.

9. The second contention of Mr. Das is that the allegations made in the complaint petition taken at their face value make out absolutely no case against the petitioner u/s 418, IPC. On the other hand, it seems to be a case of civil nature for breach of contract or breach of promise to pay the transport charge. Therefore, subject to law of limitation and proof, the opposite party should approach the civil Court for recovery for a sum of Rs. 15,700/- from the petitioner.

10. According to the allegations made in the complaint petition supported by the statements of two witnesses examined in the inquiry u/s 202 of the Code, the petitioner received goods from the opposite party sent by consignment No. 4447 dated 4. 1. 1983 and consignment Nos, 3694, 3695 and 3696 dated 8. 1. 1983, on 8. 1. 1983 and 13. 1 1983 respectively. At the time of delivering the consignments, according to normal practice of business between the parties, the petitioner should have paid the transport charge of Rs. 15,700/- to the opposite party then and there. But on the plea that there was no cash, the petitioner deferred the payment. Besides making oral requests for payment of the transport charge, two letters were sent by the opposite party to the petitioner on 12. 4

1983 and on 20. 4. 1983 making demand of the same. The petitioner gave reply by letter dated 19. 7. 1984, inter alia stating therein that the transport charge relating to the disputed consignments had already been paid to M/s. Konark Transport Corporation which submitted (he bills therefor. After repudiation of the claim of the opposite party civil action was not taken but, on the other hand, the complaint petition was filed.

11. From the aforesaid facts it appears that there was a contract for carriage of goods between the parties. The opposite party performed his part of the contract by transporting and delivering the goods, but the petitioner did not perform his part of the contract by making payment of the transport charge and repudiated, the claim on the ground that the transport charge claimed by the opposite party had been paid to another transporter. These being the facts it was either a case of breach of contract or breach of promise creating a civil liability for which the opposite party should have approached the civil Court for recovery of the transport, charge of Rs. 15,700/-, instead of taking recourse to criminal action.

12. According to Section 418, IPC, whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person who was interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished. In order to attract the provision of Section 418 there must first be cheating which according to Section 415, IPC, means fraudulent or dishonest deception and inducement to a person so deceived to deliver any property to any person or to consent that any person shall retain any property, or intentionally induced the person so deceived to do or omit to do anything which he would not do or omit if he was not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

13. In Sardar Trilok Singh and Others Vs. Satya Deo Tripathi, , the dispute arose out of the hire purchase agreement of a truck by instalments. On the ground that there was default of instalment on the part of the hire purchaser and the accused forcibly removed the truck from the possession of the complainant despite protest, the complainant filed a complaint petition for offences Under Sections 395, 468, 465, 471, 412 and 120B/34, IPC. Of) these facts it was held that the criminal proceeding was clearly an abuse of the process of Court and was liable to be quashed. The dispute raised was purely of civil nature even assuming the facts stated in the complaint petition were substantially correct.

In 55(1983) CLT 24, M/s. Lord Match Industries v. M. S. Salvasekaran, reliance was placed on State of Kerala Vs. A. Pareed Pillai and Another, , where it was observed as follows :

"To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfil the promise "

It was, therefore, held that the case was one of mere breach of contract without prima facie materials to make but an offence of cheating and so the order of cognisance was quashed. In Prafulla Mohanty Vs. Ashok Kumar Das, , reliance was placed on M/s. Lord Match Industries case (supra) and it was held that a prima facie case u/s 420, IPC, had not been made out. The dispute was one for cognisance by the civil Court. Therefore, the criminal proceeding was quashed;

14. On consideration of the facts and the settled-position of law elucidated above, I am clearly of the view that the petitioner had no dishonest nor criminal intention in acting in the manner he did in his official capacity as the Managing Director of Konark Television Limited. So, even though it is assumed that all the facts alleged in the complaint petition are true, yet a case of cheating u/s 418, IPC, cannot be made out against him. His liability, if any, is purely of a civil nature and the opposite party had the freedom to take recourse to a civil action according to law.

15. The last contention relates to the bar of sanction u/s 197(1) of the Code. The petitioner is a member of Orissa Industry Service, Class I (Junior) and, thus, a gazetted officer* of the State Government. He was deputed by the State Government to function as the Managing Director of Konark Television Limited. He is thus, a public servant not removable from his office save by or with the sanction of the State Government as contemplated in Section 197 of the Code. This fact was not disputed at the time of hearing.

16. The petitioner as the Managing Director of Konark Television Limited accepted goods sent vide consignment Nos. 4447, 169,4, 3695 and 36%. According to the opposite party the transport charge of Rs. 15,700/- should have been paid to it. The amount was demanded by letters addressed to the petitioner on 12.4.1983. and 20. 4. 1983. The petitioner by his letter dated 19.7.1983 repudiated the claim saying that the transport charge of Rs. 15,700 had been paid to the transporter M/s. Konark Transport Corporation Acceptance of goods as per the consignments and repudiation of the opposite party's claim for the transport charge substantially gave rise to the complaint petition. If the petitioner would not have been the Managing Director of Konark Television Limited, he would have no occasion to accept the goods as per the consignments and repudiate the claim or the opposite party saying that the transport charge amounting to Rs. 15,700/- had been paid to another transporter. In other words, the alleged actions of the petitioner were performed as a public servant in course of discharge of his official functions. He could not perform such functions in his individual capacity. Therefore, the actions of the petitioner were inextricably connected with his office as a public servant.

17. In Amrik Singh Vs. The State of Pepsu, , it was held that it is not every offence committed by a public servant that required sanction for prosecution u/s 197(1) of the Code nor even every act done by him while he is actually engaged in the performance of his official duties ; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to

have been done by virtue of the office, then sanction would be necessary, and that would be so irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution. In *B. Saha and Others Vs. M.S. Kochar*, it was held that the words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197(1) are capable of a narrow, as well as, a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, "it is no-part of an official duty to commit an offence, and never can be". In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while, engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision. It is the quality of the act that is important, and if it falls within the scope and range of his official duties, the protection contemplated by Section 197 will be attracted.

18. From the facts and the settled position of law, no position is conceivable except that before launching prosecution against the petitioner sanction u/s 197(1) of the Code was essential and necessary. Manifestly, the opposite party did not obtain such sanction. Therefore, this is another ground for which the entire criminal proceeding is liable to be quashed.

19. For the reasons stated above, this is a fit case in which, in order to prevent abuse of the process of the Court, inherent powers u/s 482 should be exercised for quashing the criminal proceeding against the petitioner. Accordingly, the criminal proceeding arising out of ICC Case No. 275 of 1983 against the petitioner in the Court of the learned Chief Judicial Magistrate, Cuttack, is quashed.