

(1983) 09 OHC CK 0015

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 296 of 1983

Satrughana Dalabehera and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 19-09-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 162, 173, 173(2), 173(3)
Penal Code, 1860 (IPC) — Section 420

Citation : (1983) 56 CLT 405

Hon'ble Judges : B.K. Behera, J

Bench : Single Bench

Advocate : P.K. Dhal, D. Nayak and R.K. Pattanayak, for the Appellant; D.P. Sahoo, for the Respondent

Final Decision : Allowed

Judgement

B.K. Behera, J.—The Petitioners, alleged to have committed an offence of dacoity with other companion-culprits during the night of the 20th/21st July, 1982, in the house of the first informant Kirtan Sahu at Jagannath prasad in the district of Puri, invoke the jurisdiction of this Court u/s 482 of the Code of Criminal Procedure (for short, "the Code") to quash the orders passed by the learned Judicial Magistrate at Daspalla taking cognisance of the offence on the basis of the charge-sheet placed against them and seven others showing the Petitioners as absconders and thereafter refusing to interfere when an application was made to rescind the order taking cognisance and to quash the criminal proceeding against them. Appearing on their behalf, Mr. Dhal has contended that save and except the statement of a co-accused person, namely, Narayan Behera, recorded in the course of investigation, which cannot take the place of legal evidence, there is no other material to connect the Petitioners or any of them with the commission of the offence and therefore, the learned Magistrate went legally wrong in taking cognisance and proceed in against them, It has been submitted by the learned Standing Counsel for the State that besides the statement of the co-accused Narahari, there is no other material against the Petitioners, but as

the Petitioners are accused of an offence of dacoity triable by the Court of Session, the matter be better left to the Court of trial to find out this aspect.

2. The inherent jurisdiction of the High Court to quash a criminal proceeding is to be exercised in a proper case to prevent an abuse of the process of the court or to secure the ends of justice. Where the allegations in the first information report or in the complaint, even on their face value and if accepted in entirety, do not constitute an offence the inherent jurisdiction of the High Court to quash a proceeding can be exercised. See *R.P. Kapur Vs. The State of Punjab*, , *Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others*, and *Dr. Sharda Prasad Sinha Vs. State of Bihar*, . As has been laid down by the Supreme Court in the well-known case of *Madhu Limaye Vs. The State of Maharashtra*, , in case the impugned order clearly brings about a situation which is an abuse of the process of the court or for the purpose of securing the ends of justice, interference by the High Court is absolutely necessary, the High Court may exercise its power u/s 482 of the Code. This power, however, is to be exercised very sparingly but criminal proceedings instituted illegally or vexatiously or without jurisdiction should be quashed. At the stage of finding out as to whether a criminal proceeding is to be quashed, this Court is not to appreciate the evidence or the materials on which the complainant seeks reliance and on the basis of which cognisance of the offence has been taken nor to assess the evidence or to judge the probabilities or improbabilities in the case. At the same time, the Court cannot be oblivious of the tendency of a litigant person to implicate others by deliberately making false insinuations. As has been observed by the Supreme Court in *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, the liberty and property of any individual are sacred and sacrosanct and the court zealously guards them and protects them. In that case, their Lordships of the Supreme Court quashed the investigation as the first information report and the other materials did not disclose any offence.

3. Ordinarily a criminal proceeding initiated against an accused person must be tried under the provisions of the Code and the High Court would be reluctant to interfere at an interlocutory stage. It is not possible, desirable and expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. Some of the categories of cases where the inherent jurisdiction to quash a proceeding can and should be exercised are: (i) where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding In respect of the offence alleged, (ii) 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 and (iii) where 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 the evidence adduced clearly or manifestly fails to prove the charge. 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 a case where there is legal evidence which, on its appreciation, may or may not support the accusation in question. The High Court should not embark upon an enquiry as to whether the evidence is reliable. This is the function of the trial court 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 an accused person cannot be sustained.

4. It has been laid down by the Supreme Court in *Hareram Satpathy Vs. Tikaram Agarwala and Others*, , that as the Magistrate is restricted to finding out whether there is a prima facie case or not for proceeding against the accused and cannot enter into a detailed discussion of the merits or demerits of the case and the scope of the revisional jurisdiction is very limited, the High Court cannot launch on a detailed and meticulous examination of the case on merits and set aside the order of the Magistrate directing issue of processes against certain persons. It would be useful to keep in mind the principles laid down in *Chandra Deo Singh Vs. Prokash Chandra Bose and Another*, , *Balraj Khana and Ors. v. Moti Ram* 1971 S.C.D. 822 and *Nirmaljit Singh Hoon Vs. The State of West Bengal and Another*, . Whether there are sufficient materials to hold a person guilty of the charge levelled against him is to be decided at the stage of the trial and not at the stage of finding out as to whether sufficient materials are there to proceed against the person complained against. In this connection, reference may also be made to the observations made by this Court in the cases of *Braiamohan Das v. Jogi Bisoi* 1982 C.L.R. (Cri) 203, *Achuta and Others Vs. Smt Bewa*, and *M.S. Jaggi Vs. Registrar, High Court of Orissa and Another*, .

5. Dealing with the question with regard to quashing of a criminal proceeding, in the case of *Lord Match Industries, through its partner A. Pugalanthi and Ors. v. M.S. Selvasekharan* 55 (1983) C.L.T. 24, this Court keeping in mind the observations made by the Supreme Court in *Sardar Trilok Singh and Others Vs. Satya Deo Tripathi*, , quashed the criminal proceeding against the accused person in a case u/s 420 of the Indian Penal Code holding that the facts alleged did not constitute the offence the dispute being purely of a civil nature and the initiation of a criminal proceeding was an abuse of the process of the court and deserved to be quashed.

6. In *Vitla Venkata Rao and Ors. v. Suttapalli Venkata Rao and Ors.* 56 (1983) C.L.T. 553, in which the question raised was as to whether cognizance of an offence taken against the accused persons should be quashed, this Court held:

Although the Court is not to make a detailed and meticulous examination of the materials against an accused person at the stage of taking cognizance, cognizance of the offence is not to be taken mechanically without any application of mind. It is to examine the materials placed before it apply its mind and find out as to whether cognizance should be taken. Taking cognizance is a legal and judicious act which sets criminal law in motion and a person is prosecuted thereafter. A court should, therefore, properly apply its mind which, as I see, had

not been done in these four cases....

7. In a recent decision reported in *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, , the Supreme Court, dealing with the question of quashing of a criminal proceeding, observed:

The test is taking the allegations of the complaint as they are without adding or subtracting anything if no offence is made out, High Court will be justified in quashing the proceeding.

It has been held therein that the inherent power is to be exercised by the High Court u/s 482 of the Code when no other remedy is available and sparingly.

8. As has been submitted by the learned Counsel for both the sides and noticed by the learned Magistrate, while considering the application for rescinding his order taking cognisance, the only material against the Petitioners is the statement of a co-accused person implicating them in the commission of the offence. The learned Magistrate did find:

I fully agree with the defence counsel that there is no material in the C.D. to implicate the accused Petitioners with this case, except the statement of accused Naran Behera, recorded by I.O. u/s 161 Code of Criminal Procedure 1973. I also agree with the argument of defence counsel, that the seizure list do not disclose about anything being recovered from the house of accused-Petitioners save and except from the house of accused Petitioner Chakradhar Dalbehera.

As has been submitted at the Bar, the recovery of two pieces of clothes from the house of the Petitioner Chakradhar Dalbehera, if accepted, would not connect him in any manner with the commission of the alleged offence. According to the learned Magistrate, as he had taken" cognisance of the offence, there was no provision empowering him to recall his order.

9. The statement of a co-accused person in the course of investigation is not and cannot be treated as evidence being hit by the provision contained in Section 162 of the Code to the effect that no statement made by any person to a police officer in the course of investigation shall be used for any purpose save as provided therein. The question as to whether the expression "any person" occurring in Section 162 of the Code would also include an accused person came up for consideration of the Privy Council in the case of AIR 1939 47 (Privy Council) , and it has been laid down that the expression any person in Section 162 would also include an accused person. The statement of a co-accused person, as in the instant case, is, therefore, inadmissible in evidence against the Petitioners.

10. There is thus no legal evidence at this stage to, connect the Petitioners or any of them with the commission of the crime of dacoity. I notice that in the first information report the victim had stated that he would be able to identify some of the culprits. The Petitioners were said to be absconding and as a result, no steps could be taken by the investigating agency for their identification at a test

identification parade, as has been submitted by the learned Standing Counsel. Even after taking cognisance, non-bailable warrants or arrest have been issued against the Petitioners and the warrants remain to be executed by the police agency. If the Petitioners had been apprehended by the police agency, some of them might have been identified by the first-informant and some of the other witnesses to the occurrence who had stated to the Investigating Officer that they would be able to identify some of the culprits. Even after the closure of the investigation and- the submission of a report under Sub-section (2) of Section 173 of the Code the Investigating Officer can forward to the Magistrate a further report or reports if he obtains further evidence oral or documentary. Section 173(8) reads:

Nothing in this section shall be deemed to preclude from investigation in respect of an offence after a report under Sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of Sub-sections (2) to (6) shall, as far as may be, apply in relation to a report forwarded under Sub-section (2).

This is a new provision empowering the police authorities to further investigate even after submission of the charge-sheet and materials gathered thereafter can be placed before the Court.

11. In the absence of other prima facie materials to connect an accused person with the commission of an offence, the mere fact of absconding, even if accepted, can be of no avail to the prosecution as by itself, it would not necessarily lead to the conclusion of a guilty mind. Even an innocent man may feel panicky and try to evade arrest when suspected of a grave crime. Such is the instinct of self-preservation.

12. This Court is to find out as to whether on the materials placed before the learned Magistrate at the time of taking cognisance, the materials could justify the impugned order taking cognisance. Save and except the statement of a co-accused person to the Investigating Officer, there was no material placed before the learned Magistrate at that time which could be the foundation of the impugned order.

13 In view of what has been stated above, I find that the impugned order has brought about a situation which is an abuse of the process of the court. The learned Magistrate has not properly applied his mind to find out as to whether cognisance could legally be taken against the Petitioners.

14. Keeping in mind the principles laid down by the Supreme Court and this Court, to which reference has been made by me, it is a fit case, in my view, to exercise the inherent powers of this Court and quash the impugned order taking cognisance. If at the stage of trial of the other accused persons, if and after a commitment is made, the trial court finds materials against the Petitioners or any

of them, it is open to it to proceed against them as provided in Section 319 of the Code. See Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, .

15. In the result, I would allow the application, set aside the impugned order taking cognisance of the offence of dacoity against the Petitioners and quash the criminal proceeding in so far as it relates to them.