

(1954) 08 OHC CK 0008

In the Orissa High Court

Case No : Supreme Court Appeal No. 9 of 1954

S.K. Ghosh

APPELLANT

Vs

Maheswar Dehuri

RESPONDENT

Date of Decision : 12-08-1954

Acts Referred:

Constitution of India, 1950 — Article 134, 134(1)
Criminal Procedure Code, 1898 (CrPC) — Section 367, 561A

Citation : AIR 1954 Ori 248 : (1954) 20 CLT 523

Hon'ble Judges : Panigrahi, C.J.; Mohapatra, J

Bench : Division Bench

Advocate : M. Mahanti, for the Appellant; S. Patnaik, for the Respondent

Final Decision : Allowed

Judgement

Panigrahi, C.J.—This is an application under Article 134(1)(c) of the Constitution praying for special leave to appeal to the Supreme Court against an order passed on 29-10-1953, by a Division Bench of this Court, in a proceeding u/s 561-A, Criminal P. C. The circumstances giving rise to an application of this kind are somewhat unusual and for a correct appreciation of the points raised in this application, it will be necessary to set out a few facts.

2. The petitioner is a member of the Indian Police Service and was, at the relevant time, the Superintendent of Police Mayurbhanj, A dacoity case was" registered at Morada Police Station on. 26-4-1951. During the investigation of that case one Maheshwar Dehuri and two other persons were arrested and brought to the police out-post at Rasgovindpur for interrogation. Maheshwar made certain confessional statements and was arrested at about 7 p.m. on that day by Shri K. M., Das, the Sub-Inspector of Police, and was handed over to one D. Gartia, the officer in charge of the Rasgovindpur Police outpost. Two constables were deputed to watch the accused who was sitting on the verandah of the outpost, but the accused escaped from custody at about 8 p.m. A case u/s 224, Penal Code was, therefore, registered, and 11 witnesses were examined for

the prosecution and 12 for the defence.

3. The prosecution, besides examining a number of witnesses relied upon Ext. 6, the confession made by the accused u/s 184, Cr. P. C., in that case and upon Ext. 9, the statement made by him u/s 342, Cr. P. C., in the Court of the Committing Magistrate enquiring into the case of dacoity. The trying Magistrate, Shri P. R. Chandra did not, however, choose to rely on this evidence as he was of opinion that the fact of the arrest. of the accused had not been noted in the Station Diary maintained at the Rasgovindpur outpost. Nor had an F. I. R, been drawn up at that outpost immediately after the accused escaped from custody. The Magistrate, therefore, came to the conclusion that the "arrest" of the accused which is an essential ingredient of the offence u/s 224, I. P. C., had not been established.

4. The accused attempted to prove that the petitioner abetted the fabrication of the F. I. R. through Shri J. C. Chakrabarty (P. W. 1) the Inspector of Police. The Magistrate, after a lengthy discussion of the evidence, came to the conclusion that a persistent attempt had been made by the prosecution

"to introduce changes in the Station Diary and thereby bolster up the prosecution case."

He accordingly held that prosecution case had not been proved. But instead of resting content with that finding, the Magistrate proceeded to make certain general observations on Police Officers, and particularly on the conduct of the petitioner, Shri S. K. Ghosh, which are damaging to his reputation. The passage in paragraph 5 of the Magistrate's judgment to which exception has been taken reads as follows:

"It is a pity that Supervising Officers of the rank of Superintendent of Police and Inspector of Police have fallen in line with the Sub-Inspector of Police, and have not tried to find out or present matters as they were. It is a very sad reflection on the Police administration of a district that he stooped so low as to suggest to this subordinate to change valuable police papers in order to see to the success of the case. It is also very highly objectionable that the head of the police administration of a district could allow deferring and back-dating the F. I. R. on which trial courts lay utmost importance and, as a matter of fact, has been a party to it. There is no doubt in my mind that the Inspector J. C. Chakrabarty (P. W. 1) has lodged this false case and S. I. K. M. Das (P. W. 2) and Superintendent of Police S. K. Ghosh have abetted the lodging of the false case. In the fitness of things they deserve a trial in court for this, but I think justice will be done if Government take action against these officers."

In the end, he found the accused not guilty and acquitted him.

4a. The State appealed u/s 417, Cr. P. C., against the order of acquittal and the three Police Officers filed petitions u/s 561-A in this Court praying for expunction of the objectionable remarks made by the learned Magistrate. These petitions

were numbered as Criminal Revisions 110, 111 and 112 of 1952. The Government Advocate filed a petition to examine Shri Ghosh as a witness in the appellate proceedings and put in the confidential diary of D. W. 1, the Station Diary of Morada Police Station, and some other papers as additional evidence, to prove that the conclusions drawn by the Magistrate, relating to the genuineness of the F. I. R. were unsound.

This Court, however, rejected the prayer of the prosecution to adduce any further evidence to contradict D. W. 1's evidence, but allowed Shri Section 1C Ghosh to be examined, as it had been alleged that Shri Ghosh had been summoned by the defence but was not examined and an application by the prosecution made in the lower Court to examine him as a Court witness had also been rejected. This Court upheld the order of acquittal and dismissed the appeal filed by the State, and also dismissed the revisions filed by the three Police Officers.

5. Learned counsel for the petitioner, Shri S. K. Ghosh, complains that his client has been made a victim of judicial lynching both in the trial court and in this Court and that his case has not been fairly considered in either of the Courts. He has drawn our attention to a few extraordinary circumstances attending this case, the most important one being that the Magistrate, Shri P. R. Chandra, took a hostile attitude against the Police in general and the Superintendent of Police, in particular, from the very commencement of the trial. It is pointed out that the Magistrate himself cross-examined P. W. 1 at length before a charge had been framed.

It is undoubtedly true that the Court always acts as the friend of the accused, but the Magistrate appears to have gone much beyond his legitimate function and to have imported his personal knowledge into the evidence. In the course of his examination of P. W. 1 the Magistrate suggested to him whether it was not a fact that accused Maheshwar had not been arrested (see page 8, line 58 of the printed paper book in Govt. Appeal No. 5 of 1952.) A further question was put by the Magistrate as to whether the arrest of the accused was noted in the Station Diary.

It is difficult for me to guess as to how the Magistrate came to know that the fact of the arrest of the accused had not been noted in the Station Diary, at so early a stage. A note is made that the suggestion had been made by the defence, but it should have been left to the defence to put that question and elucidate the point. It would appear from the last answer given by P. W. 1 that the Magistrate was trying to make out the defence case that the Superintendent of Police insisted on the Sub-Inspector, Shri Gartia, to alter the station diary.

Secondly, it is pointed out that the entire defence evidence was let in to prove that the Superintendent of Police was determined to put Sub-Inspector Gartia into trouble and that therefore he suggested an alteration in the Station diary. This evidence was wholly irrelevant to the decision of the case, as the only point for determination was whether the accused had escaped from lawful arrest.

Instead of confining himself to this only issue the Magistrate allowed a lot of irrelevant material to be brought on the record as if the Superintendent of Police was himself on trial. After having recorded so much evidence it was but fair, and indeed necessary, that the Superintendent of Police should have been called into the box and given an opportunity to explain.

The Magistrate however in his order No. 30 dated 12-12-51 (page 89 of the Paper Book) said that the evidence of the four persons sought to be examined by the P. I. as Court witnesses was not essential for a just decision of the case. The Magistrate was perhaps justified in observing that the examination of any witnesses at that stage was not essential for the just decision of the case. It was equally important that no animadversions should have been made against persons who were not before the Court either as parties or as witnesses. It was wholly unnecessary for the Magistrate to deliver a homily on the Police Officers and to charge the Superintendent with having abetted the lodging of a false case after denying him an opportunity to explain.

6. It is unfortunate that this Court while observing in paragraph 9 of its judgment that the police witnesses were divided into two parties, one party headed by Shri S. K. Ghosh supporting the prosecution and the other party headed by Deputy Superintendent of Police Shri Sanatan Panda (D. W. 9) supporting the defence case, has failed to appreciate the contention of the petitioner that the Magistrate's remarks were not justified by the evidence that was actually before him. Whatever may be the opinion of this Court of the evidence of Shri S. K. Ghosh the jurisdiction of this Court u/s 561-A, Criminal P. C., is limited to an examination of the evidence already recorded by the Magistrate and the propriety of the Magistrate's remarks based on that evidence alone. I do not think it is open to this Court to take additional evidence and justify the remarks made by a Subordinate Court, in the light of that additional evidence. In endorsing the remarks of the Magistrate this Court has indulged in surmises as to what was probable, what the Superintendent of Police would have thought or done. Towards the end of paragraph 22 of the judgment Narasimham J. delivers himself of the following observations:

"It is also probable that the S. P. thought that by starting a case u/s 224, Penal Code, against Maheswar the latter may get frightened and may help the police in the detection of the dacoity case by confessing his guilt and naming his accomplices.....In other words, the case u/s 224, Penal Code, was perhaps started with the primary object of facilitating the investigation in the parent dacoity case by compelling Maheshwar to tell the Police all that he knew. Whatever might have been the motive of S, P. Shri S. K. Ghosh in dictating draft F.I.R. to Inspector Banerjee on the 29th evening, I have no doubt that the F. I. R, was drawn up at his instance and ante-dated."

I would respectfully dissent from these observations as I am of opinion that it is not open to a Court to indulge in surmises and damage the reputation of a responsible officer by drawing inferences from facts which have no legs to stand

upon. "Probable", "perhaps" and "might have been" are expressions which would hardly inspire confidence in the soundness of a judgment. The only security that Judges have for the proper exercise of their "extraordinary power to censure parties or witnesses is the trained reason and habit of seeking principles even while using discretion in applying them.

While disapproving of the conduct of the Magistrate in putting questions to the first witness for the prosecution this Court also held that there was no indication on the record to show that the Magistrate was biased against the prosecution from the very beginning as was alleged. As I have shown already, the very nature of the questions put by the Magistrate, betrays his bias. A closer study of the evidence would also indicate that both the police officers and the Magistrate were divided into two camps in the district, either because of the fact that the Sub-Inspector of Police, Sri Gartia, was immediately suspended by the Superintendent of Police, for negligence of duty, or for some other reason.

I need refer only to the evidence of D. W. 1 the Bench Clerk of the Magistrate Shri U. C. Misra who recorded the confessional statement of the accused. This witness wanted to prove that the confession was not voluntary as the Investigating Officer was present when it was being recorded. D. W. 2 is the Deputy Magistrate who was directed by the District Magistrate to hold an enquiry as to whether the confession had been recorded voluntarily.

I am surprised that the District Magistrate should have taken this extraordinary step of enquiring into the voluntary character of a confession which was the subject-matter of a regular criminal trial. I am therefore inclined to the opinion that the District Magistrate and the Superintendent of Police had, for some reason or other, fallen out and that the atmosphere had been so vitiated as to render a fair and impartial trial impossible. Some of the Police Officers took the side of the suspended Police Sub-Inspector and approached the S. P. to persuade him not to take any steps against him (see p. 27, evidence of D. W, 9 and p. 32, the evidence of D. W. 11 in the paper book.)

After delivery of judgment on 4-2-1952 the Magistrate noted in the order-sheet that the Superintendent of Police had requested him a week earlier to declare the case "True, but no evidence", and that he was anxious to save P. W. 1. This Court called for an explanation from the Magistrate and was satisfied that the Magistrate was "an intimate friend of the Superintendent of Police and, therefore, took no action against Shri Ghosh". Nonetheless it is obvious that this intimate friend did not hesitate to give a stab in the back of Shri Ghosh, after he has pronounced his judgment.

7. In paragraph 28 of his judgment, Narasimham J. has referred to a Bombay case laying down certain principles bearing on the function of the High Court acting u/s 561-A, Cr. P. G., while recording his agreement with these principles, I regret to say, my learned brother appears to have overlooked the import of the passages quoted while applying them to the facts of this case. One particular

passage in the quotation which is of great significance is this:

"A jurisdiction like this is intended to be exercised when remarks are made against strangers which remarks may do irreparable harm to them and who have not even been heard in their defence "by the Court which passes these remarks. This jurisdiction is not intended to substitute the opinion of the High Court for the opinion of the lower Court,"

7a. In his evidence before this Court, the Superintendent of Police denied that he had requested the Sub-divisional Magistrate, Shri P. R. Chandra, on 26-1-52 to declare the case to be true. He also explained why he wrote a letter to the Magistrate. The explanation given by him is that the defence wanted to drag him into the box just to humiliate and harass him. But in spite of this, this Court observed:

"Such a conduct on the part of the Superintendent of Police is certainly objectionable and the strong language used by the learned Magistrate against him, Inspector Chakravarty and S. I., K. M. Das, seems justified."

There is no reason given as to why the explanation given by the Superintendent of Police should not be accepted in preference to the "ex cathedra" observations made by the Magistrate. It seems to me that the petitioner has been subjected, unfortunately, to a process of judicial injustice in both the Courts by the admission of improper evidence and the failure of the Courts to justly appraise it.

8. The points, therefore, that arise for consideration by the Supreme Court may be formulated as follows:

(i) Whether a Court acts within its jurisdiction in making remarks which adversely affect the status, prestige and official position of a person who is not given an opportunity to explain.

(ii) Whether the remarks made by the Magistrate in the concluding paragraph of his judgment were necessary for the decision of the case before him, and whether in any event they can be justified if the evidence on which they are based is found to be irrelevant.

(iii) Whether the jurisdiction of the High Court u/s 561-A, Criminal P. C., is not limited to a consideration of the evidence already recorded by the lower Court, or whether it is open to the High Court to take additional evidence into consideration and, on the strength of such evidence, refuse to exercise its jurisdiction u/s 561-A.

We have not been referred to any authoritative pronouncement of the Supreme Court on these points and as these are likely to arise again and again it is necessary to obtain the considered opinion of the Supreme Court. The matter is also of considerable public importance as public servants have no protection or security against undeserved remarks passed by subordinate Court, except by invoking the inherent jurisdiction of the High Court; and where the High Court

improperly refuses to exercise it or erroneously exercise it, it is necessary that the party aggrieved should be permitted to seek redress in the Supreme Court as no other remedy is available.

9. We would accordingly allow this petition and certify that this is a fit case for grant of leave to, appeal to the Supreme Court under Article 134(1)(c)" of the Constitution.

Mohapatra, J.

10. The three points of law formulated by my Lord in the last page of his judgment as arising in the present case are substantial points of law of considerable public importance requiring pronouncement of their Lordships of the Supreme Court. I would, therefore, agree with my Lord and certify that this is a fit case for grant of leave to appeal to the Supreme Court under Article 134(1)(c) of the Constitution.