
(2009) 12 OHC CK 0066
In the Orissa High Court
Case No : Criminal Rev. No. 1367 of 2007

Sri Bhagirathi Panda and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-12-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 202(2)
Penal Code, 1860 (IPC) — Section 34, 436

Citation : (2010) CLT 825 (Suppl CrI)

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

Bench : Single Bench

Advocate : Prafulla Ku. Rath, for the Appellant; Sangam Kumar Sahoo, for O.P. No. 2, for the Respondent

Judgement

B.K. Patel, J.—Learned Counsel for the Petitioners-accused persons, Learned Counsel for the State & Learned Counsel for the Opp. Party No. 2 are present. Heard.

2. In this revision the Petitioners call in question the legality of the Order Dated 18.09.2007 passed by Learned S.D.J.M., Bhadrak in ICC No. 137 of 2007 taking cognizance of offence u/s 436 read with 34 of the I.P.C. & issuing summons for appearance of the Petitioners.

3. The only contention raised by the Learned Counsel for the Petitioners in assailing the impugned order is that the Learned Magistrate could not have taken cognizance of the offence without recording the statement of complainant along with other witnesses produced in course of inquiry u/s 202 of the Code of Criminal Procedure. by the complainant. Undisputedly, Learned Magistrate had recorded initial statement of the complainant & the complainant has not chosen to examine himself also during inquiry u/s 202 of the Code of Criminal Procedure. In course of which other witnesses were examined. In Charan Rout and Ors. v. Prafulla Kumar Mangaraj (1996) 11 OCR 322 a Division Bench of this Court has held:

The choice being that of the complainant, he may choose to examine himself. Consequences of such non-examination are to be considered by the Court during trial. Effect of non-examination of a particular witness is a matter which comes for scrutiny during trial. Similar would be the process in case of non-examination of complainant. But there is no statutory mandate for the Magistrate to direct complainant to examine himself. His duty ends by calling upon the complainant to produce all his witnesses. The question that the complainant would choose to examine & effect of no examination of any particular witness are not dealt with in the proviso to Sub-section (2) of Section 202 of the Code of Criminal Procedure.

In our view, therefore, the Magistrate has no statutory obligation to call upon the complainant to examine himself as a witness. He is only required to call upon the complainant to produce all his witnesses & examine them on oath. He cannot force the complainant to examine himself. The expression "call upon" means essentially "require", "direct". What is to be directed under the proviso is the production of all the witnesses, & their examination on oath.

4. In view of such position of law, Learned Counsel for the Petitioners submits that the Petitioners do not want to press the revision.

5. However, Learned Counsel for the Petitioners submits that the Petitioners are ready & willing to surrender before the Court below in response to summons issued by the Learned Magistrate & it is apprehended that they may be remanded to custody in the event of their appearance. Such apprehension is, prima facie, unfounded in view of the fact that at the first instance the Learned Magistrate has not chosen to issue warrant & has chosen to issue summons. In such circumstances, it is needless to point out that in case the Petitioners choose to surrender before the Learned S.D.J.M., Bhadrak in ICC No. 137 of 2007 on or before 6.1.2010, the Learned Magistrate shall admit the Petitioners to bail on such terms & conditions as he deems just & proper. Thereafter, Learned Magistrate shall take steps to commit the case for trial to the Court of Sessions expeditiously preferably within two months.

6. The revision is, accordingly, disposed of. Urgent certified copy of this order is granted on proper application.

Crl. Rev. disposed of.