

(2000) 11 OHC CK 0023

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 2035 of 2000

Sri Brajananda Nayak and others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 14-11-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 190(1), 319, 482
Penal Code, 1860 (IPC) — Section 302, 323, 34, 341, 427

Citation : (2001) 91 CLT 389 : (2001) 1 OLR 500

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

Bench : Single Bench

Advocate : M/s Sachidananda Sahoo and R.K. Mohanty, for the Appellant; M/s D.P. Dhal, A.K. Acharya, B.B. Mishra and P.K. Routray, Mr. A.K. Mishra, S.C., for the Respondent

Final Decision : Allowed

Judgement

1. Heard.

In this application u/s. 482. Cr.P.C. petitioners challenge the order dated 25-1-2000 of the J.M.F.C. Basudevapur in G. R. Case No 686 of 1999. By that order learned J.M.F.C., after fresh pesusal of the statement of the Case Diary and also the statements u/s. 164, Cr. P. C., added the petitioners as accused persons and directed to issue non-bailable warrant of arrest against them. The said three persons assail that order on the ground that learned J.M.F.C. had no jurisdiction to pass such an order at that stage of the proceeding.

2 It is not disputed at the Bar that after submission of the Final Form (Charge-sheet) learned J.M.F.C. while taking cognizance, issued process against the accused persons named in the charge-sheet. On a subsequent date, i.e., on 13-10-99 the prosecution filed an application to add the petitioners as the accused persons and to issue process against them. While disposing of that application, learned J.M.F.C., Basudevapur passed the impugned order.

3. Law is well settled that after taking cognizance of the offence in accordance with the provision u/s 190 (1)(b), Cr. P. C. the cognizance taking Magistrate is to consider the materials in the Case Diary and to issue process against the persons mentioned in the charge sheet and at that stage he cannot add or substitute the names of the accused persons. Admittedly, in the present case, learned Magistrate having taken cognizance of the offences u/ss. 341, 302, 323, 427/34, I P.C. the said offences are exclusively triable by the Court of Session. Thus, in view of the ratio in the cases of Raj Kishore Prasad Vs. State of Bihar and another, and Kishori Singh and others v. State of Bihar and another. 2000 19 OCR 647, the aforesaid order of the learned Magistrate is contrary to the provision of law and accordingly set aside. However, it is needless to say that at the stage of trial after recording some evidence if application u/s. 319, Cr. P. C. shall be moved by the informant or the prosecution that may be considered in accordance with law by the trial Court.

4. The crl. misc. case is thus allowed.

5. Crl. misc. case allowed.