

(2009) 04 OHC CK 0023

In the Orissa High Court

Case No : Criminal Revision No. 100 of 2009

Sri Jeetendra Kumar Mediratta

APPELLANT

Vs

Republic of India

RESPONDENT

Date of Decision : 07-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 405, 406, 409, 415

Citation : (2009) CLT 1049 (Suppl CrI)

Hon'ble Judges : I. Mahanty, J

Bench : Single Bench

Advocate : Saktidhar Das, B.K. Nayak and D.K. Mohanty, for the Appellant; S.K. Padhi, for the Respondent

Final Decision : Dismissed

Judgement

I. Mahanty, J.—The present criminal revision petition has been filed by Sri Jeetendra Kumar Mediratta-Petitioner herein seeking challenge of an order dated 21.11.2008 passed by the learned Special Chief Judicial Magistrate (CBI), Bhubaneswar in S.P.E. No. 32 of 1994 whereby, the Court below rejected the present Petitioner's application for discharge.

2. It is stated by the Petitioner that on 18.8.1994 a suo motu F.I.R. was drawn up by the Deputy Superintendent of Police, CBI under which a case u/s 120-B/406 of the Indian Penal Code was registered against M/s Doaba Industrial and Trading Company Pvt. Ltd. (In short "DITCO") and M/s Marine Consultants and Surveyor Ltd. (in short "MARCONS"). It appears that in the said F.I.R. it was alleged that DITCO and MARCONS entered into criminal conspiracy with each other and in pursuant to said conspiracy they misappropriate value 52.809 M.Ts of Aluminium ingots amounting to Rs. 32.7 lakhs during the period of 1992-93. It further appears that National Aluminium (in short "NALCO") had engaged DITCO as their Clearing and Forwarding Agent at Paradip Port to look after the export of their aluminium ingots during 1991-93 grid a written agreement dated 20.6.1991

had been executed between the parties for the said work, Basing on the F.I.R. investigation was carried out by the DSP, CBI and after completion of the investigation Charge Sheet (C.S.) was submitted on 31.3.1995 in which DITCO and one Mr. P.R. Maniktala, Director-cum-General Manager, DITCO were shown as accused Nos. 1 and 2 respectively for committing offence u/s 406 of the Indian Penal Code. The accused No. 2. Sri P.R. Maniktala thereafter filed an application for discharge before the learned Special Chief Judicial Magistrate (CBI), Bhubaneswar, which was rejected on 29.10.1996 and challenge thereto was made before this Court in Criminal Revision No. 543 of 1996.," This Court disposed of the said revision vide its judgment dated 19.8.2002 allowing both Criminal Misc. Case No 503 of 1997 and Criminal Revision No. 543 of 1996 in part to the extent included in the judgment. The judgment in the case of P.R. Maniktala v. CBI has been reported in 2002 (Supp.) OLR 309. In the concluding, paragraph-12 of the said judgment, this Court passed the following directions:

... the prosecution is free and at liberty in any stage of the proceeding to produce materials, if any that any other person who has not been arrayed as an accused of the present accused against whom prosecution has been quashed also committed the alleged offence and if it satisfies the trial Court in that regard, the learned trial Court can take cognizance and proceed as against such persons and try them along with the remaining accused persons. However, it need not be emphasized that it is for the learned trial Court to take a decision in the matter in accordance with law on the basis of materials placed before it in the event it is so done by the prosecution. It is made clear that the fact that the prosecution as against Sri P.R. Maniktala has been quashed by the Court would not stand on the way of the learned Court below from exercising such discretion; if it is satisfied from materials placed before it at subsequent stage that a case for taking cognizance and to proceed as against him is made out.

3. It appears that subsequent to the disposal of the earlier criminal revision petitions, a supplementary charge sheet was filed u/s 406 of the Indian Penal Code before the learned Special CJM (CBI), Bhubaneswar, against the present Petitioner namely, Sri Jeetendra Kumar Mediratta (Petitioner herein) and the Petitioner's application for discharge having been rejected by order 21.11.2008, the present criminal revision has been preferred by him challenging the same.

4. Mr. S.D. Das, learned senior counsel appearing on behalf of the Petitioner submitted that u/s 405 of the Indian Penal Code, the prosecution must first prove "entrustment" with the property or dominion over the property. So far as this criteria is concerned it is admitted in the present revision petition, that NALCO had entrusted the work of shipment of its aluminium ingots to DICTO and therefore DITCO had dominion over the property, of NALCO. But it is contended that mere entrustment with the property or dominion over the property will not suffice to bring home the charge u/s 406 of the Indian Penal Code and the prosecution is further required to prove that such person with whom the property has been entrusted or who have dominant over the property acted dishonestly or

misappropriate or converted the same for its own use resulting in wilful sufferance to any other person. Learned Counsel further submitted that in the absence of any evidence to justify any dishonesty misappropriation or conversion for his own use no prosecution against the present Petitioner could be maintained.

5. Sri S.K. Padhi, learned senior counsel appearing for the opposite party-CBI on the other hand raised preliminary objection for dismissal of the present revision petition on the ground that the Petitioner not having approached the Court in clean hand inasmuch as the Petitioner has in the present petition declared below the cause title that "the matter out of which this criminal revision arises was never before this Court in the present form" yet, the Petitioner had moved this Court in Criminal Misc. Case No. 613 of 2000, seeking to challenge the order of cognizance dated 13.2.2004 passed by the Special CJM (CBI), Bhubaneswar in SPE Case No. 32 of 1994, u/s 406, IPC. The said criminal misc. case was dismissed by this Court by order dated 8.2.2006. He further submitted that the non-disclosure of the aforesaid most relevant fact amounts to suppression of relevant fact and is adequate evidence of the Petitioner having approached this Court with unclean hand by suppressing the material and relevant facts.

Sri Padhi further submitted that whereas it is a fact that the original Charge Sheet had been filed against Mr. P.R. Mankitala-Director cum-General Manager, DITCO as an accused in the C.S. filed on 31.3.1995. The said accused-Mr. P.R. Mankitala has sought to challenge the charge framed against him before this Court earlier in Criminal Revision No. 543 of 1996. While it is correct to say that in the said judgment reported in 2002 (Supp.) OLR 309 (supra) this Court was pleased to quash the charge framed against Sri P.R. Maniktala, yet in the selfsame judgment in paragraph-5 thereof this Court has noted as follows:

... that there is no doubt that one J.K. Madiratta and A.P. Jains were the persons working as the Manager and Assistant Manager respectively of DITCO at Paradeep and were receiving the aluminium ingots sent by NALCO to DITCO and they were also in charge of and the custodian of the goods so received by them.

6. Apart from the above Sri Padhi learned Counsel for the CBI further submitted that in the aforementioned case, i.e., in the case of Mr. P.R. Maniktala. (supra) this Court specifically made it clear that, the fact that the prosecution as against Mr. P.R. Maniktala was being quashed by this Court, would not stand in the way of the learned Court below from exercising such discretion, if it is satisfied from materials placed before it at a subsequent stage, that a case for taking cognizance and to proceed against him is made out. Sri Padhi therefore produced before me the CD. of the investigation as well as the copy of the supplementary C.S. dated 2.1.2004. From the supplementary C.S. the following is noted:

Under the above fact and circumstances as prima facie is made out against Sri Mediretta for having been entrusted with the aluminium: ingots by NALCO and converted the portion thereon for his own use and thereby committed offences u/

s 406, IPC. Accordingly, I submitted supplementary charge sheet against Sri Mediretta to stand is trial in the open Court of law. This Supplementary charge sheet may be treated "in continuation of earlier charge sheet and trial may be proceeded against Sri J.K. Mediretta and the company M/s. DITCO in accordance with the law;

7. Relying on the above Sri Padhi submitted that it is well settled in law that at the stage of framing charge the Court has to apply its mind to the question whether or not there is any ground for presuming the commission of offence by the accused. The Court has to see while considering the question of framing the charge as to whether the material brought on record would reasonably connect the accused with the offence and therefore, at such stage the Court is required to consider the question of framing charge and apply the test of "prima facie case" only. It is well settled that if the Court were to think that accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. Therefore at the stage of framing of a charge, "probative value of the materials on record cannot be gone into", the materials brought on record by the prosecution has to be accepted as true at that stage. In support of the aforesaid proposition Sri Padhi placed reliance upon the case of Sanghi Brothers (Indore) Pvt. Ltd. Vs. Sanjay Choudhary and Others, .

8. Sri Das, learned senior counsel for the Petitioner on the other hand placed reliance upon the case of S.K. Alagh Vs. State of U.P. and Others, . In the said case one M/s. Akash Traders had been appointed as a dealer of Britannia Industries Limited for Azamgarh in the State of U.P. The dealership of M/s. Akash Traders was terminated. It had earlier been informed that goods will be delivered only after receipt of demand draft issued by it and the Complainant sent two demand draft of various amount for supply of the goods on 14.9.2000, in spite of the fact that, the dealership had been terminated, While the demand drafts had been sent to the Appellant through the local Sales in-charge of the Company, it is stated that the complainant had also refused to take back the said demand drafts and a new Area Wholesaler for Azamgarh was pointed by the Company. It appears that the demand of delivery of the goods was made by the complainant on 24.9.2000, stating that the company owes him a sum of Rs. 1,00,000/-, but the company refused to respond the such demand since complainant's dealership had been terminated earlier. In the facts of the said case, the proprietor of the firm M/s. Akash Traders filed a complaint petition before the CJM, Azamgarh against the Appellant Managing Director for commission of an offence u/s 406 of the Indian Penal Code and the Company namely, Britannia Industries Limited had not been impleaded as an accused therein.

9. It was in such circumstances that the Hon''ble Supreme Court came to the conclusion that, since admittedly draft had been drawn in the name of the Company, even if the Appellant was its Managing Director, he cannot be said to have committed an offence u/s 406, of the Indian Penal Code. In the facts of the

present case, the Petitioner admits in paragraph-6 of the present revision petition that at the relevant time he was working as Project Manager of DITCO at Paradeep and on perusal of the prosecution documents it appears that he had signed the agreement for and on behalf of the Company and further there exists a finding by this Court, in an earlier criminal revision in the case of P.R. Maniktala (supra), that there is no doubt that one J.K. Mediratta and A.P. Jains were the persons working as the Manager and Assistant Manager of DITCO at Paradeep and were receiving the aluminium ingots sent by NALCO to DITCO and they were also in charge of and the custodian of the goods so received by them. It is the loss of such goods which is the subject matter of the prosecution and therefore, the facts of the present case are clearly distinguishable from the case referred to or relied upon by the Petitioner.

10. Next case relied upon by the Petitioner is the case of Sardar Singh Vs. State of Haryana, . In the said case Hon''ble Supreme Court came to hold that mere failure or omission to return property not sufficient to constitute offence u/s 409 of the Indian Penal Code. That in the aforesaid case the Appellant had been convicted for an offence and such conviction having been upheld in appeal, the same was challenged before the Hon''ble Supreme Court. Therefore/while having no doubt about the principles enunciated by the Hon''ble Supreme Court in the aforesaid judgment, I am afraid the said judgment would not be much use to the Petitioner since the present proceeding is not an appeal but instead seeks to question the charge framed by the trial Court.

11. Learned Counsel for the Petitioner further placed reliance upon the judgment of the Hon''ble Supreme Court in the case of R. Kalyani Vs. Janak C. Mehta and Others, . In the said case Hon''ble Supreme Court, was dealt with an order, of quashing of an F.I.R. by the High Court of Judicature at Madras in exercise of its extraordinary writ jurisdiction. Their Lordship of the Hon''ble Supreme Court in paragraphs-29, 30 which are quoted herein:

29. The allegations contained in the first information report, therefore, do not disclose an offence against Respondents 1 and 2. They have in their individual capacity been charged for commission of offences of cheating, criminal breach of trust and forgery. As there had never been any interaction between the Appellant and them, the question of any representation which is one of the main ingredients for constituting an offence of cheating, as contained in Section 415 of the Indian Penal Code, did not and could not arise.

30. Similarly it has not been alleged that they were entrusted with or otherwise had dominion over the property of the Appellant or they have committed any criminal breach of trust.

12. After closure of the hearing of the matter on 31.3.2009, i.e., on 2.4.2009, Sri Das, learned senior counsel made a mention of this matter and while providing a copy of the judgment of the Hon''ble Supreme Court in the case of Rukmini Narvekar Vs. Vijaya Satardekar and Others, requested the Court to take the

same into consideration before pronouncing the judgment.

13. On consideration of the request made and copy of the citation submitted and on perusal of the judgment of the Hon''ble Supreme Court, it is clear that Their Lordships have dealt with the Section 482 Code of Criminal Procedure and came to hold that the High Court is free to consider the material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. It is further held therein that in some very rare cases, the Court is justified in looking into the material produced by the defence at the time of framing of the charges, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted. While allowing the proposition of law as noted hereinabove, in the facts of the said case, Their Lordships came to conclude that in the instant case, it cannot be said that the evidence in the civil suit which was produced by the defence before the trial Court established convincingly that the prosecution case is totally absurd or preposterous.

14. I am afraid the aforesaid judgment is of no real use to the Petitioner in the present case. It is not the case of the Petitioner that it having produced any material either before the Court framing charges or even in this revision, from which it could be convincingly concluded or established that the prosecution version is totally absurd or preposterous or concocted. In the absence of any such material to the contrary, the aforesaid judgment is of no real use to the Petitioner.

15. In the present case not only does the Petitioner admit taking possession of the property in question but also admits dominion over the same. Further in the C.S. the charge against the Petitioner is for "having been entrusted with aluminium ingots sent by NALCO and converted a portion thereof for his own use and thereby committed an offence u/s 406 of the Indian Penal Code." I am of the considered view that in the facts of the present case the judgments relied upon by the Petitioner are of no assistance and clearly distinguishable and instead the present case is covered by the principles laid down in the case of Sanghi Brothers (Indore) (supra).

16. Therefore, in the light of discussion made herein above, I am of the considered view that the present challenge against framing of charge against the Petitioner and rejection of his discharge petition vide order dated 21.11.2008 passed by the learned Special Chief Judicial Magistrate (CBI), Bhubaneswar in S.P.E. No. 32 of 1994 must fail and is therefore rejected.