
(2006) 02 OHC CK 0023
In the Orissa High Court
Case No : CRLMC. No. 663 of 2005

Sri Nabaghana Patalasingh	Vs	APPELLANT
Smt. Bhanumati Padhiari		RESPONDENT

Date of Decision : 14-02-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 202, 205, 482, 82
Penal Code, 1860 (IPC) — Section 294, 34

Citation : (2006) CLT 337 (Suppl CrI) : (2006) 1 OLR 330

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : P.K. Mishra and S.K. Dash, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.

1. The petitioner in this application u/s 482 Cr.P.C. challenges the order dated 06.12.2001 passed by the learned S.D.J.M., Anandapur in I.C.C. No. 79 of 2001 taking cognizance of the offences u/s 294 read with Section 34 of the Indian Penal Code and subsequent orders directing issuance of non-bailable warrant of arrest against the petitioner for his non-appearance in the Court.

2. A complaint case was filed on the allegation that the complainant had gone to the Soso Police Station to lodge an F.I.R. against some persons who had created disturbances relating to the boundary wall. It is alleged that when she requested the accused Govinda Chandra Mallik, Officer-in-charge of the Police Station to accept the F.I.R., she was abused in filthy language and the petitioner, who was working as A.S.I. at that point of time also used such language. After filing of the complaint case, the learned Magistrate took up inquiry u/s 202 Cr.P.C. and took cognizance of offence u/s 294 read with Section 34 of the Penal Code by order dated 6.12.2001. Subsequently, the petitioner filed an application u/s 205 Cr.P.C. for dispensing with his personal appearance and the same was rejected on

10.1.2002. The aforesaid order was not challenged. Subsequently, the petitioner having failed to appear in person, N.B.W.A. was issued on 27.3.2002. In spite of issuance of non-bailable warrant of arrest, the petitioner did not appear and only when the learned Magistrate took steps by issuing process under Sections 82 and 83 of the Cr.P.C., the petitioner has approached this Court challenging the order taking cognizance.

3. The learned Counsel appearing for the petitioner challenges the order taking cognizance solely on the ground that he is protected u/s 197 Cr.P.C., and cognizance cannot be taken without prior sanction of the Government. In this connection, the learned Counsel relied on certain decisions. According to learned Counsel for the petitioner, there was a case pending against the complainant and while investigating the same, the present occurrence is alleged to have taken place and, therefore, Section 197 Cr.P.C. has full application. The decisions relied upon by the learned Counsel for the petitioner are the cases of Matajog Dobey Vs. H.C. Bhari, , Kremjit Mohananda Vs. Mohanpani Karua and Another, ; State of Bihar Vs. Kamla Prasad Singh and Others, , N.K. Ogle v. Sanwaldas alias Sanwalmal Ahuja reported in (1999) xvi OCR 530 Abdul Wahab Ansari Vs. State of Bihar Another, , Rizwan Ahmed Javed Shaikh and Others Vs. Jammal Patel and Others, , Sri Satyabadi Padhi Vs. Nepal Chandra Kar, and Nirupama Dey Vs. Chaitanya Dalua and Another,

4. I have perused all the judgments carefully and on reading of the judgments, it is clear that whether protection u/s 197 Cr.P.C. is available to the accused or not entirely depends on the facts of each case. No case can be equated with another unless the facts are similar. In a case of such nature, the Court is called upon to see as to whether there is any nexus between discharge of official duty and the conduct alleged. Accepting the contention of the learned Counsel for the petitioner that there was a case pending against the complainant and investigation was going on the said case and that the petitioner was the Investigating Officer, under no stretch of imagination, it can be said that when the complainant had gone to the police station to lodge an F.I.R., she was abused in connection with investigation of the case where the complainant is an accused. There is no material on record to show that the complainant was called to the Police Station in connection with investigation of the case where she was an accused. On the other hand, it is clear from the complaint that relating to an incident regarding boundary wall she had gone to the Police Station on her own to lodge an F.I.R. and she was misbehaved. From reading of the complaint, it appears that serious abusive words were used against the complainant even though she was a lady. When someone goes to the Police Station to lodge an F.I.R., it is the duty of the Officer-in-Charge to accept the F.I.R. and register the same, if a cognizable offence is made out. The Officer-in-Charge has no right to abuse the informant in the Police Station. Here is a case, where the complainant had gone to the Police Station to lodge an F.I.R. Instead of registering the same, she was abused in very filthy language. Under these circumstances, use of abusive words to a lay who had come to the Police Station to lodge an F.I.R.

cannot be covered by any part of official duty and I am, therefore, of the view that there is absolutely no nexus between official duty and the conduct alleged by the complainant and accordingly, Section 197 Cr.P.C. has no application. The cases cited by the learned Counsel for the petitioner clearly indicate that the circumstances were such that the Investigating Officer had to exceed his limit in exercising his duty and, therefore, the Court found that there was nexus between the official duty and the conduct alleged. Therefore, all the decisions relied upon by the learned Counsel for the petitioner are distinguishable. In view of the discussions made, I am of the view that the petitioner has failed to establish any nexus between discharge of official duty and the conduct alleged and accordingly he is not entitled to protection u/s 197 Cr.P.C.

5. Apart from the above, the conduct of the petitioner is evident from the order sheet of the learned Magistrate. The learned Magistrate took cognizance on 6.12.2001 and issued process. The petitioner instead of appearing before the Court, filed a petition u/s 205 Cr.P.C. to dispense with his personal appearance and the said petition was rejected on 10.1.2002. The aforesaid order was not challenged by the petitioner. Thereafter, the petitioner did not appear in the Court in spite of service of summons and on 27.3.2002 the learned Magistrate had issued N.B.W.A. against him. Still then the warrant was not executed and the learned Magistrate had to issue process under Sections 82 and 83 Cr.P.C. on 14.5.2004. Only after this order was passed, the petitioner has approached this Court. This conduct of the petitioner clearly indicates that he has no regard for the Court and tried his best to avoid appearance in Court for years. I am, therefore, of the view that issuance of N.B.W.A. by the learned Magistrate because of the conduct of the petitioner was justified and legal. The petitioner has filed this application on 7.3.2005 challenging the order dated 6.12.2001. The learned Counsel for the petitioner has not explained as to why there has been such delay in filing the application. The learned Counsel could not explain the delay and possibly he could not have given explanation as the order sheet clearly show that the petitioner was avoiding appearance in Court till process was issued under Sections 82 and 83 Cr.P.C.

6. In view of the discussions made above, I do not find any merit in the application and the same is dismissed.