
(2005) 09 OHC CK 0012

In the Orissa High Court

Case No : Writ Petition (C) No. 3949 of 2005

Sri Surendra Nath Swain

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 28-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 156(3), 190, 190(1)
Penal Code, 1860 (IPC) — Section 120B, 34, 409, 511
Prevention of Corruption Act, 1988 — Section 15, 19, 5, 5(3), 5(4)

Citation : (2005) 100 CLT 537 : (2006) CriLJ 462 : (2005) 2 OLR 714

Hon'ble Judges : Sujit Barman Roy, C.J.; M.M. Das, J

Bench : Division Bench

Advocate : S.P. Swain, for the Appellant; B.K. Mahanti, General, for the Respondent

Judgement

Sujit Barman Roy, C.J.—By this Writ Petition under Article 226 of the Constitution of India, petitioner has prayed for quashing the order passed by the Special Judge (Vigilance), Bhubaneswar rejecting the prayer of the petitioner u/s 156(3) of the Criminal Procedure Code to issue direction to the Superintendent of Police (Vigilance), Bhubaneswar Division to treat the said complaint being Annexure-5 as an FIR and to investigate the same and also for issuing direction to the Chief Secretary, Government of Orissa, Bhubaneswar to direct the Superintendent of Police, Vigilance, Bhubaneswar Division or the Officer-in-Charge of Capital Police Station, Bhubaneswar to treat Annexure-5 as an FIR and also for issuing further direction to the Director, Central Bureau of Investigation, New Delhi to investigate into the said allegations.

2. In the complaint it has been inter alia alleged by the petitioner-complainant that the opposite parties being Shri Naveen Patnaik, Chief Minister of Orissa; Shri Kanaka Vardhan Singh Deo, Minister, Industries and Public Enterprises; Members of the Technical Committee of Industrial Development Corporation of Orissa Ltd., Members of the Board of Directors of IDCOL; Shri Hrushikesh Panda, CMD,

IDCOL; Shri Satya Prakash Nanda, the then Secretary, Industries Department, Government of Orissa and Proprietor and/or other members of M/s. Jindal Strips Ltd. committed offences under Sections 120B/409/511/34, IPC and Section 15 of the Prevention of Corruption Act, 1988.

3. It is contended by the Learned Counsel for the petitioner that the petitioner lodged a complaint before the Special Judge (Vigilance), Bhubaneswar alleging, inter alia, that the aforesaid persons committed various offences u/s 120B/409/511/34, IPC and Section 15 of the Prevention of Corruption Act, and praying for transmitting the said complaint u/s 156(3), Cr.P.C. to the Officer-in-charge of Capital Police Station, Bhubaneswar for registering it as an FIR and for a further direction upon the C.B.I. to investigate the case. Learned Counsel for the petitioner made various allegations in order to show that the aforesaid persons committed various offences under the aforesaid provisions of penal law while accepting the bid of M/s. Jindal Strips Ltd. for granting mining lease in its favour in respect of chromite mines situated at Tangarpada within the State of Orissa.

4. On the other hand, Learned Advocate General contended that perusal of the complaint would reveal that it does not disclose any prima facie case of commission of cognizable offence and therefore, no FIR can be registered on that basis.

5. It is also contended by the Learned Counsel for the petitioner that the Learned Special Judge (Vigilance) instead of referring the complaint of the petitioner to the police for registering it as an FIR himself took cognizance of the matter and proceeded with the enquiry u/s 200, Cr.P.C. He referred to various orders passed in this connection by the Learned Special Judge (Vigilance). He further submitted that the Learned Special Judge (Vigilance) took cognizance of the offence without any sanction as required by or u/s 19 of the Prevention of Corruption Act, 1988 or u/s 197 of the Code of Criminal Procedure. He therefore contended that as the cognizance taken by the Learned Special Judge (Vigilance) is bad in law for want of appropriate sanction within the meaning of Section 19 of the said Act or within the meaning of Section 197 of the Code, the same should be quashed and this Court should direct the Learned Special Judge (Vigilance), Bhubaneswar to forward the complaint u/s 156(3) of the Code to the Officer-in-charge of the concerned Police Station for registering it as an FIR and for a further direction upon the CBI for investigation.

6. It is true, as contended by the Learned Counsel for the petitioner, that the cognizance taken by the Special Judge (Vigilance) is bad for want of appropriate sanction within the meaning of Section 19 of the said Act or Section 197 of the Code of Criminal Procedure and hence the cognizance taken by the Learned Special Judge (Vigilance) must be quashed and accordingly we do the same. The next important question is whether we can issue any such direction upon the Learned Special Judge (Vigilance) to forward the complaint of the petitioner to the Officer-in-charge of the concerned Police Station for registering it as an FIR

and for investigation. In this connection, Section 5 of the Act appears to be very important and hence the same is quoted hereunder:

"5. Procedure and powers of Special Judge : (1)A Special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974) for the trial of warrant cases by the Magistrate.

(2) A Special Judge, may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such persons on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall for the purposes of Sub-sections (1) to (5) of Section 308 of the Code of Criminal Procedure, 1973 (2 of 1974) be deemed to have been tendered u/s 307 of that Code.

(3) Save as provided in Sub-section (1) or Subsection (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as they are not inconsistent with this Act, apply to the proceedings before a Special Judge; and for purposes of the said provisions, the Court of the Special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in Sub-section (3), the provisions of Sections 326 and 475 of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as may be, apply to proceedings before a Special Judge and for the purposes of the said provisions, a Special Judge shall be deemed to be a Magistrate.

(5) A Special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.

(6) A Special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by the District Judge under the Criminal Law (Amendment) Ordinance, 1944 (Order 38 of 1944)."

A combined reading of Sub-section (3) and Sub-section (4) of Section 5 of the said Act clearly shows that the Special Judge is not be treated as a Magistrate within the meaning of Sub-section (3) of Section 156 of the Code. Sub-section (3) of Section 156 empowers any Magistrate competent to take cognizance u/s 190 to order for such an investigation as mentioned in Sub-section (1) thereof. Now, a combined reading of Sub-section (3) and Subsection (4) of Section 5 clearly shows that a Special Judge appointed under the provisions of said Act is not a Magistrate within the meaning of Sub-section (3) of Section 156 of the Code and therefore, the Special Judge is incompetent to refer such complaint to

the police to investigate such case. We are therefore unable to issue any such direction upon the Learned Special Judge (Vigilance), Bhubaneswar to refer the complaint to the police for its registration as an FIR and to investigate the case.

Furthermore, a Magistrate can refer a complaint to Police for registration of the same as an FIR only when the complaint discloses prima facie case of commission of cognizable offence. Equally, Police has no power to register a complaint as an FIR unless the complaint discloses a prima facie case of commission of a cognizable offence.

7. On perusal of complaint, it appears to us that it does not disclose any prima facie case of commission of any cognizable offence at all. Merely because this Court while disposing of a Writ Petition observed in the judgment that the selection of the bid of M/s. Jindal Strips Ltd. for granting some mining lease was arbitrary or unreasonable, we cannot under the law raise a presumption that corruption was involved in the deal. Even nepotism or favouritism, if any, does not necessarily mean that some cognizable offence was committed. Therefore, on perusal of the complaint lodged by the petitioner-complainant, we do not find any prima facie case of commission of any cognizable offence. In the absence of prima facie case of commission of any cognizable offence, Police has no power to register a complaint as an FIR. Equally, this Court cannot direct the Police to register such complaint as an FIR. Perusal of Section 154, Cr.P.C. will demonstrate as to under what circumstances the police can register an FIR. In the instant case, those circumstances are absent inasmuch as the complaint being founded on the judgment passed in a Writ Petition quashing selection of M/s. Jindal Strips Ltd. for granting mining lease in respect of some chromite mines as arbitrary or unreasonable, it cannot be said that this Court gave any such finding that anybody committed any corruption or penal offence cognizable under law while selecting the bid of M/s. Jindal Strips Ltd.

8. In the circumstances, for want of sanction the cognizance taken by the Learned Special Judge (Vigilance), Bhubaneswar is quashed and the prayer made in the petition for sending the complaint to the Police to register it as an FIR is rejected.

The petition is thus disposed of.

M.M. Das, J.

9. I agree.