

(1995) 12 OHC CK 0001

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 1125 of 1994

Srikanta Kumar Panda

APPELLANT

Vs

Saratulla Khan

RESPONDENT

Date of Decision : 15-12-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 193, 202, 302, 482

Orissa Forest Act, 1972 — Section 27

Penal Code, 1860 (IPC) — Section 278, 323, 330, 337, 342

Citation : (1996) CriLJ 2104

Hon'ble Judges : R.K. Dash, J

Bench : Single Bench

Advocate : D.P. Patnaik, G.S. Das and T.N. Patnaik, for the Appellant; J.M. Mohanty, S.S. Mishra, S.C. Mohapatra and D. Samal, for the Respondent

Judgement

R.K. Dash, J.—The petitioner, a police officer, by filing the present Criminal Misc. case u/s 482, Cr. P.C. has invoked the inherent power of this Court to quash the criminal proceeding in ICC No. 35 of 1982 pending against him in the Court of the Judicial Magistrate, First Class, Banpur.

2. The complainant (hereinafter referred to as the "opposite party") in the aforesaid Complaint Case is a driver of a Matador vehicle bearing registration No. ODI 2598. It is alleged that on 10-9-1982 while he was returning from Banpur Court, the Sub-Inspector of Banpur P.S. asked him to come to the police station with the said vehicle. Accordingly he came to the police station where the officer-in-charge seized the vehicle and detained him. On the next day the petitioner who was also a Police Sub-Inspector of that police station assaulted and threatened him to make a confessional statement that on 19-8-1982 one Ajay Pradhan was carrying illicit leak wood in his Matador Van. When he refused to give such statement, it is alleged, the petitioner gave him two blows with a roll stick, caught hold of his toft of hair and asked the Constable to give electric shock. Being frightened he gave statement which was not recorded in a tape recorder. On the plea of attending call of nature the opposite party escaped from

the police station, got himself medically examined and then filed the complaint. Learned Magistrate having held inquiry u/s 202. Cr. P.C. was satisfied that there was prima facie case against the petitioner under Sections 323, 342, 330 and 348, IPC and consequently took cognizance and issued process for his appearance.

3. The case of the petitioner is that the opposite party was so accused in Banpur P.S. Case No. 171 of 1982 under Sections 411, 453, 323, 278 and 337 IPC and Section 27 of the Orissa Forest Act. On 10-9-1982 at about noon. Sub-Inspector Shri Bahera finding the opposite party near the Court premises with the vehicle involved in the case asked him to produce the said vehicle in the police station. Accordingly the complainant brought the vehicle to the police station thereupon the same was seized and subsequently released in favour of its owner, on his furnishing necessary (sic) since the opposite party was involved in a case, he was arrested on 12-9-1982 and was released on bail.

4. Shri D.P. Patnaik. learned counsel for petitioner, contends that since the opposite party being an accused in a cognizable crime was arrested and proceeded against in accordance with law, as a counter blast he has initiated this case making all false and frivolous allegations. Further, the petitioner being the Investigating Officer and the act complained of having nexus with the discharge of his official duty, even if any excess was done in performance of that official duty, he is protected by Section 193, Cr. P.C. and the case having been filed without sanction of the appropriate authority, order of taking cognizance is bad. Learned counsel further urged that the case has been dragging on since 1982 and in the meantime although 13 years have elapsed, the trial is yet to begin. The petitioner has been harassed and has suffered a lot in all these years and because of this long delay, interest of justice demands that the proceeding should be brought to. halt.

5. I have gone through the case record to ascertain the reason for not taking up hearing of the case as yet. On scrutiny I find that both parties have contributed for the delay. The opposite party remained absent for long years from 1987 to 1990 and did not show any interest to proceed with the case. The petitioner although attended the Court in all these years, but subsequently did not take steps for which warrant of arrest was issued against him. On earlier occasion he was although attending Court but on one date, that is on 17 -6-1985 he could not attend since he was required to be present in duty at Puri in connection with Car Festival. Me. therefore, filed a petition to be represented through his counsel. But the Court rejected said prayer and issued warrant of arrest against him. On a scrutiny of the record, I am of the view that the opposite party would be blamed more, because he did not show his anxiety on any occasion for progress of the case. By now there has already been a lapse of 13 years and if the proceeding is allowed to continue, it would be a sheer harassment to the petitioner who has already suffered mental agony. There are series of judicial pronouncements where long delay has been taken as the sole ground to quash the proceeding. In

this context it would be opposite to refer to a few of them.

6. In the case of *Kachender v. The State of Hyderabad* : AIR 1955 Supreme Court 792, their Lordships held:

"We are not prepared to keep persons who are on trial for their lives under indefinite suspense because trial judges omit to do their duty. Justice is not one-sided. It has many facets and we have to draw a nice balance between conflicting rights and duties. While it is incumbent on us to see that the guilty do not escape it is even more necessary to see that persons accused of crime are not indefinitely harassed. They must be given a fair and impartial trial and while every reasonable latitude must be given to those concerned with the detections of crime and entrusted with the administration of Justice, limits must be placed on the lengths to which they may go."

In the case of *State of U.P. v. Kapil Deo Shukla* : 1972 SCD 709, Shalot, J. speaking for the Court observed thus:

"In a recent case of proceedings for alleged perjury, this Court held that lapse of a long time, in that case of ten years, was a proper ground for holding that launching of a prosecution was inexpedient. *Chajoo Ram Vs. Radhey Shyam and Another*, . Similarly, in *Machander v. State of Hyderabad* AIR 1956 SC 792 where an order of conviction u/s 302 was set aside by this Court for failure to examine the appellant u/s 342 of the Code, a remand was declined on the ground that the accused had been arrested in 1960 and had been on his trial one way or the other for over four and a half years.

x x x x x

These observations and the refusal to order remand on the ground of the trial having protracted for four and a half years apply with equal and perhaps with greater force in the present case since the respondent has been kept in suspense of a trial for twenty years and more.

This Court also in *P. Chiranjivi v. Principal, M.K.C.G. Medical College*: (1979) 47 Cut LT 126, considered the long lapse of time as a ground to quash the proceeding. The relevant observation of the Court in that context is reproduced hereunder:

"The petitioner is alleged to have committed the offence in 1964 when he took his admission into the Medical College, Berhampur on the basis of Exts. 1, 2 and 3. He completed his medical course and passed M.B.B.S. Examination in 1970. Two years thereafter, that is in 1972, the present complaint was filed. Thus, the structure of the prosecution is based on materials which came into existence eight years prior to filing of the present complaint. It took four more years to collect and adduce evidence and to frame charges against the petitioner. In the meantime, two more years have gone by. Petitioner has become, in the meantime, a fullfledged doctor and no other blemish or criminal activity has been attributed to the petitioner since the date of his admission into the college till

now. is yet, no iota of evidence has been adduced that he manufactured or fabricated the nativity certificate, Ext. 1, or used it falsely knowing it to be untrue or false. To allow the criminal proceeding to continue further after a long lapse of time of fourteen years from the date of alleged commission of offence would amount to permitting a Court proceeding to degenerate into a weapon of harassment and would not, at this stage, achieve any statutory public purpose. On the facts and circumstances obtaining in the instant case, such continuance constitutes gross abuse of process of Court. It is thus imperative for securing the ends of justice that this criminal proceeding should no longer be allowed to stand."

7. Since I have considered long delay as sufficient ground to quash the proceeding, I feel it not necessary to deal with question of want of sanction u/s 193, Cr. P.C. as raised by the petitioner.

8. Taking into consideration the long delay in disposal of the case coupled with judicial pronouncements of the apex Court and of this Court referred to above, it would, in my opinion, be just and fair to quash the proceeding in exercise of inherent power. Accordingly the proceeding in ICC No. 35 of 1982 is quashed.