
(1979) 12 OHC CK 0013
In the Orissa High Court
Case No : Criminal Revision No. 498 of 1979

State of Orissa

APPELLANT

Vs

Khetrabasi Biswal and Others

RESPONDENT

Date of Decision : 21-12-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 102, 200, 202, 202(2), 204
Penal Code, 1860 (IPC) — Section 395

Citation : (1980) 49 CLT 203

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

Bench : Single Bench

Advocate : B. Biswal and N.K. Muduli, for the Respondent

Final Decision : Allowed

Judgement

P.K. Mohanti, J.—This Criminal Revision arises under the following circumstances:

One Markandeswar Parida filed a complaint in the Court of the Sub-divisional Judicial Magistrate, Jagatsinghpur alleging commission of an offence of dacoity by the accused-opposite parties. After examination of the complaint u/s 200, Code of Criminal Procedure, the Magistrate held an enquiry u/s 202, Code of Criminal Procedure and directed the complainant to produce his witnesses. At the enquiry, the witnesses for the complainant were examined, but the complainant himself was not examined. Thereafter the Magistrate issued processes to the accused u/s 204, Code of Criminal Procedure and in due course committed them to the Court of Session to stand their trial u/s 395, Indian Penal Code. At the trial, the prosecution wanted to examine the complainant, but the accused persons raised objection on the ground that the complainant having not been examined during the enquiry u/s 202, Code of Criminal Procedure his examination during the sessions trial is not permissible. The learned Assistant Sessions Judge upheld the objection by his order dated 7-11-1979. It is against that order this criminal revision has been preferred.

2. The point for consideration is whether a complainant who has not been examined at the enquiry u/s 202, Code of Criminal Procedure can be examined at the sessions trial.

3. Section 200, Code of Criminal Procedure requires a Magistrate taking cognizance of an offence on complaint to examine upon oath the complainant and the witnesses present, if any. Section 202, Code of Criminal Procedure deals with postponement of the issue of process against the accused. According to the proviso to Section 202(2), Code of Criminal Procedure if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all "his witnesses" and examine them on oath. The Magistrate is not required to examine the complainant. He is required to examine only the witnesses produced by the complainant. In this context, the expression "his witnesses" occurring in the proviso to Section 202(2) is significant. The complainant himself cannot answer the description of "his witnesses" within the meaning of that expression. If the Legislature had intended that the complainant who has been examined u/s 200, Code of Criminal Procedure should also be examined a second time during the enquiry u/s 202, Code of Criminal Procedure, it would have expressly said so. The learned Counsel for the opposite parties is not in a position to cite any authority in support of his contention that it is obligatory on the Magistrate in any enquiry u/s 202, Code of Criminal Procedure to examine the complainant even though he has been examined u/s 200, Code of Criminal Procedure.

4. Section 208, Code of Criminal Procedure provides for the grant of copies of certain documents to the accused in cases instituted otherwise than on a police report. According to Clause (i) of that section, the Magistrate is required to furnish to the accused copies of the statements recorded u/s 200 or Section 202, Code of Criminal Procedure of all persons examined by him. The provision only means that if there are witnesses examined u/s 200 or 202 the copies of their statements should be furnished to the accused. It is argued on behalf of the opposite parties that a statement recorded u/s 202 might provide important material for cross-examination and unless the complainant is examined at the enquiry, the accused would not be in a position to discredit him by pointing out discrepancies, if any, in the evidence given at the trial and at the enquiry. I am unable to accept this contention. The legislative intention behind the provisions of Section 208 is to enable the accused to have full Idea about the case brought against him and to prepare for his defence. Even though the complainant is not examined at the enquiry u/s 102, Code of Criminal Procedure, the accused is entitled to have the copy of the complainant petition as provided u/s 204(3), the copy of the statement of the complainant recorded u/s 200, Code of Criminal Procedure and the copies of the statements of the complainant's witnesses recorded u/s 202, Code of Criminal Procedure. All these documents will enable the accused to get sufficient information about the case against him.

5. Section 231, Code of Criminal Procedure provides that on the date fixed for

examination of witnesses, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution. There is no prohibition from examining a witness who has not been examined during the enquiry u/s 202, Code of Criminal Procedure. It is, therefore, not correct to say that the effect of non-examination of the complainant during the enquiry u/s 202, Code of Criminal Procedure is that the prosecution is debarred for ever from examining him.

6. For the foregoing reasons, I allow this Criminal Revision and set aside the impugned order. The learned Assistant Sessions Judge is directed to give an opportunity to the prosecution to examine the complainant.