
(1996) 09 OHC CK 0027

In the Orissa High Court

Case No : Original Jurisdiction Case No. 8530 of 1996

Subas Chandra Palo

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 17-09-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 26
Orissa Cinemas (Regulation) Act, 1954 — Section 7, 8

Citation : (1996) 2 OLR 566

Hon'ble Judges : R.K. Patra, J;C.R. Pal, J

Bench : Division Bench

Advocate : A. Routray and P.K. Padhi, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—The short question that arises for consideration in this writ application is whether the District Magistrate is empowered to convict and punish a person as per the provision contained in Section 7 of the Orissa Cinema (Regulation) Act, 1954.

2. The petitioner was granted licence to exhibit films on video at Baliguda which was valid up to 20-6-1994. Before expiry of the licence he applied on 27-6-1994 for renewal of the said licence. The licensing authority, i. e., the District Magistrate Phulbani-opp. party No. 2 in his letter dated 1-7-1984 declined to renew the licence. The petitioner challenged the said decision by filing a writ application in this Court vide OJC No. 4674 of 1994. This Court disposed of the said writ application giving liberty to the petitioner to avail the statutory remedy of appeal. While the matter stood thus notice dated 2-8-1994 (Annexure 1) was issued calling upon the petitioner to show cause as to why the video licence would not be cancelled for exhibition of unauthorised adult video cassettes. The petitioner duly submitted his reply to the said notice denying the allegations. Against the order refusing to renew the licence the petitioner filed Appeal Case

No. 1 of 1994 before the Revenue Divisional Commissioner, Berhampur who on 21-11-1994 remanded the case to the District Magistrate to dispose of the matter after giving opportunity of hearing to the petitioner. The District Magistrate thereafter disposed of the matter on 18-1-1985 by confirming his earlier order refusing to renew the licence. The petitioner challenged the said order by filing Appeal Case No. 1 of 1995 before the Revenue Divisional Commissioner which was dismissed on 16-6-1995. Being aggrieved by the said order of the appellate authority, the petitioner filed writ application bearing number OJC 8015 of 1995. The said writ application was allowed by judgment dated 8-9-1996. The licensing authority was directed to reconsider the matter after giving due opportunity to the petitioner to place his case. Thereafter the District Magistrate has passed the impugned order dated 31-7-1996 at Annexure-3 by which he has convicted the petitioner u/s 7 of the Orissa Cinema (Regulation) Act, 1954 (hereinafter referred to as "the Act") and sentenced him to pay a fine of Rs. 200/- and further revoked the licence u/s 8 of the Act with immediate effect.

3. Perusal of the impugned order would show that the District Magistrate with a view to revoke the licence of the petitioner u/s 8 of the Act has convicted him u/s 7 of the Act.

4. Section 8 empowers the licensing authority to revoke licence if the holder of such licence has been convicted of an offence u/s 8 of the Cinematograph Act, 1952 or u/s 7 of the Act. Section 7 of the Act states that if the owner or person in-charge of a cinema uses the same or allows it to be used in contravention of the provisions of the Act or the rules made thereunder or of the conditions and restrictions upon or subject to which the licence was granted under the Act, he shall be punishable with fine which may extend to one thousand rupees and in case of a continuing offence with a further fine which may extend to one hundred rupees for each day during which the offence continues. Sub-section (2) of Section 7 says that offence punishable under Sub-section (1) shall be cognisable. As already indicated, is the licensing authority, the District Magistrate, empowered to hold a person guilty u/s 7 of the Act? To decide the said question, we have to refer to Section 26 of the Code of Criminal Procedure. The said provision provides about the Courts by which offences are triable. It reads, so far as relevant, as follows :

"26. Courts by which offences are triable--Subject to the other provisions of this Code-

(a) any offence under the Indian Penal Code (45 of 1860) may be tried by-

(i)

(ii)

(b) any offence under any other law shall, when any Court is mentioned in this behalf in such law be tried by such Court and when no Court is so mentioned

may be tried by--

(i)... ..

(ii) any other Court by which such offence is shown in the First Schedule to be triable."

The present is not an offence under the Indian Penal Code. It is an offence coming under "any other law". The First Schedule of the Code is divided into two parts; the first part deals with offences under the Indian Penal Code and in the second part classification of offences against other laws has been indicated. From it, it appears that if the offence is punishable with imprisonment for less than three years or with fine only, the Court which is competent to try such offence is any Magistrate. u/s 7 of the Act the maximum sentence is fine of Rs. 1,000/- and in case of continuing offence it may extend to Rs. 100/- for each day during which the offence continues. In view of the sentence prescribed u/s 7 of the Act, the offence thereunder is triable by any Magistrate. On perusal of the impugned order, we find that in order to invoke the power of revocation u/s 8 of the Act, the licensing authority found the petitioner guilty u/s 7 of the Act. He could not have adopted this procedure merely to take out a ground for revocation of the licence u/s 8 of the Act. The offence u/s 7 of the Act is triable by a Court and not by the licensing authority. Therefore, the order passed by the District Magistrate convicting the petitioner and revoking the licence granted to him is without any authority of law. For the aforesaid reasons, the impugned order at Annexure-3 cannot be sustained in law which is hereby quashed.

5. Shri Routray submits that the petitioner's licence expired as back as 1994 and he has applied afresh for renewal of the said licence with necessary particulars. If any such application is pending with the licensing authority, the same may be considered and disposed of according to law.

6. The writ application is accordingly allowed. There would be no order as to costs.

C.R. Pal, J.

I agree.