

(1979) 10 OHC CK 0002

In the Orissa High Court

Case No : Criminal Revision No's. 430 of 1978 and 2 of 1979

Susil Kumar Pradhan and Others

APPELLANT

Vs

Pankaj Mohanty
 State of Orissa Vs Pankaj Mohanty
and Others

RESPONDENT

Date of Decision : 26-10-1979

Acts Referred:

Criminal Law (Amendment) Act, 1932 — Section 7
Criminal Procedure Code, 1973 (CrPC) — Section 127, 128, 129, 132, 197
Penal Code, 1860 (IPC) — Section 147, 148, 149, 294, 332

Citation : (1980) 49 CLT 167

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

Bench : Single Bench

Advocate : G.B. Patnaik, B. Nayak and G.S. Das, in Criminal R. No. 430/78 and G.B. Patnaik, Government Advocate in Criminal R. No. 2/79, for the Appellant; K.K. Jena and P.R. Barik, in CrI. R. No. 430/78, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanty, J.—This two Criminal Revisions are directed against an order dated 3-10-1978 passed by the learned Sub-Divisional Judicial Magistrate of Rairangpur directing issue of processes against the accused persons u/s 204, Code of Criminal Procedure.

2. Accused Susil Kumar Pradhan is the Sub-divisional Police Officer in the subdivision of Rairangpur in the district of Mayurbhanj Accused Mahesh Chandra Mohanty is a Subinspector of Police and accused B.K. Parija is an A.S.I. of Police. Accused Khetrabasi Kar is an officer belonging to the Orissa Administrative Service posted at Rairangpur.

3. The opp. party, Pankaj Mohanty is the Secretary of the Rairangpur College Union. On 22-2-1978 he filed a complaint petition alleging that on 26-1-1978 while he along with some of his college friends had been to the official quarters of his brother-in-law Bipin Behari Kanungo, the accused persons along with some

other police officers went there at about 11 a.m. and enquired about Shri Kanungo. The wife of Shri Kanungo said that her husband was absent from the house and closed the door from inside. Then accused Khetrabasi Kar told the other accused persons that the complainant and his friends were inside that house. At this, Sushil Kumar Pradhan asked the wife of Shri Kanungo to open the door. When she declined to do so, he asked the other accused persons to break open the door. Accordingly Mahes Chandra Mohanty entered into the house by breaking open the door, assaulted the complainant and dragged him out of the house. Thereafter, two police constables caught hold of the complainant and Sushil, Mahes and B.K. Parija committed further assault on him. He was dragged to the Rairangpur police Hazat where he was again assaulted by B.K. Parija. As a result of the assault the complainant sustained injuries on his person.

4. The learned Sub-divisional Judicial Magistrate held an enquiry u/s 202, Code of Criminal Procedure. During the enquiry a preliminary objection was raised on behalf of the Petitioners that the prosecution was barred for want of sanction of the State Government, as the accused persons were legitimately acting under Chapter X of the Code of Criminal Procedure as public servants in the discharge of their official duty of dispersing an unlawful assembly which was likely to cause a disturbance of the public peace.

5. The case put forward by the Petitioners was that the police had registered as many as 11 criminal cases against the President and the Secretary of the College Union and in some of those cases charge-sheets had already been submitted. In January, 1978 the students of the Rairangpur college started agitation demanding that the criminal cases started against the President and the Secretary of the College Union should be withdrawn. The 25th of January 1978 was observed as Mayurbhanj Bandha Day and Hartal was observed through out the district. The authorities got secret information that the students would create law and order problems and to prevent any untoward incident the police force was mobilised from different parts of the district. Under the orders of the Sub-divisional Police Officer, the police personnel were deployed at key points to prevent the happenings of any unpleasant situation. On 26th January 1978 the Sub-divisional Officer, Rairangpur unfurled the National flag in the parade ground. It was noticed that the flag had been fixed in a reverse manner which caused some commotion among the students. They surrounded the S.D.O. demanding his resignation, Ultimately, the S.D.O. was taken to his vehicle under police escort and thereafter he was taken to his residential quarter. The students became agitated and decided to take a procession in protest of the action of the S.D.O. They were supported by some of the local politicians. The processionists started brick batting the residential quarters of the S.D.O. and throwing stones at the Police Officers. Shri Sarat Chandra Mohanty Executive Magistrate commanded the assembly to disperse and when the assembly did not disperse he directed dispersal of the assembly by use of force. The force was resorted to by way of tear-smoke and lathi charge. The police arrested some of the miscreants. The opp party Pankaj Mohanty who was one of the members of the

unlawful assembly, ran away from the spot to the quarters at his brother-in-law Bipin Behari Kanungo which is situated at a distance of few yards from the place where the lathi charge was resorted to. The police officers chased him and arrested him from that quarters.

6. During the enquiry u/s 202, Code of Criminal Procedure the Sub-divisional Judicial Magistrate called for the case diary of G.R. Case No. 25/78 which had been started against the opp. party Pankaj Mohanty and several other persons under Sections 147, 148, 336, 426, 294, 332, 447, 500 and 504 read with Section 149, Indian Penal Code and u/s 7 of the Criminal Law Amendment Act for the acts committed by them in connection with the incident which took place on 26-1-1978. On a perusal of the case-diary he observed that none of the accused persons is eligible to the protection given u/s 197, Code of Criminal Procedure. He overruled preliminary objection raised on behalf of the accused persons, took cognizance of the offences and summoned the accused person to stand their trial. Aggrieved by this order, the Petitioners have filed criminal Revision No. 430/78 and the State Government have filed Criminal Revision No. 2 of 1979. It is urged on behalf of the Petitioners that the case diary of G.R. Case No. 25 of 1978 which forms the basis of the findings of the learned Magistrate clearly establishes an inter-relation between the acts complained of and the official duty discharged by the accused persons on 26-1-1978 and that the accused persons are entitled to the protection u/s 132, Code of Criminal Procedure.

7. Before proceeding to consider the scope of Section 132, Code of Criminal Procedure. I may briefly refer to the relevant provisions in Chapter X of the Code of Criminal Procedure which deal with unlawful assemblies. Section 129 authorises any Executive Magistrate or Officer-in-charge of a police station to command an unlawful assembly, likely to cause a disturbance of the public peace, to disperse, and, if upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Executive Magistrate or Police Officer may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or member of the armed forces and acting as such, for the purpose of dispersing such assembly, and, if necessary arresting and confining the persons who form part of it. Section 132 provides that no prosecution against any person for any act purported to be done u/s 129 shall be instituted in any Criminal Court except, (a) with the sanction of the Central Government where such person is an officer or member of the Armed Forces, (b) with the sanction of the State Government in any other case. Before Section 132 could apply to the facts of a given case, it must be established that the act complained of was done or purported to have been done under Chapter X, Code of Criminal Procedure. In other words, it must be established that there was an unlawful assembly and the persons complained against purported to disperse such unlawful assembly u/s 129. The object of the Legislature in providing the safeguards u/s 132, Code of Criminal Procedure is to

afford adequate protection to police officers against being prosecuted for anything done by them in the discharge of their official duties. The question whether the accused persons are entitled to the protection u/s 132, Code of Criminal Procedure is a mixed question of law and fact. It has to be decided on the basis of the materials available. The Court may be able to come to the conclusion that the accused persons are protected by Section 132 either on the basis of the averments made in the complainant or on the basis of materials gathered at any subsequent stage of the proceeding. In the case of *Nagraj Vs. State of Mysore*, their Lordships held:

The occasion for the Court to consider whether the complaint could be filed without the sanction of the Government would be when at any later stage of the proceedings it appears to the Court that the action of the police officer complained of appears to come within the provisions of Sections 127 and 128 of the Code. This can be either when the accused appears before the Court and makes such a suggestion or when evidence or circumstances prima facie show it.

8. In the instant case, the learned Magistrate perused the case diary of G.R. Case No. 25/78 in order to find out whether the accused persons are entitled to the protection against prosecution. In that case, the police, after investigation had submitted charge sheet against the opposite party Pankaj Mohanty and others for the acts committed by them during the incident which took place on 26-11-1978. The case diary was produced by the learned Counsel for the State during the hearing of these Criminal Revisions. It reveals that on 26-11-1978 there was an unlawful assembly and the Magistrate Shri Sarat Chandra Mohanty, who was incharge of maintaining law and order, directed dispersal of the unlawful assembly by use of force. It also reveals that the accused Sushil Kumar Pradhan, Mahesh Chandra Mahanty and B.K. Parija were on duty and were discharging different functions during the incident. The learned Magistrate came to the conclusion that the accused persons were not performing the official duty merely because the case diary reveal that they did not go to the place wherefrom the opposite party was arrested. It is however, alleged in the complaint petition that the accused persons went to the house of Shri Bipin Behari Kanungo, broke open the door and brought the opposite party to the police station after committing assault on him. It was open to the learned Magistrate to accept either the version given in the case-diary that the accused persons did not take part in arresting the Opposite party or the version given in the complaint petition that the accused persons arrested the opposite party after committing assault on him. Where there is reasonable connection between the act complained of and the official duty the act even though it has exceeded the limits of the official duty, must be held to be in exercise or purported exercise of the official duty. The learned Magistrate has not addressed himself to the question whether the available materials bring the case within the scope of Section 132, Code of Criminal Procedure. It is, therefore, necessary that he should consider that question in the light of the above principles. If he is satisfied that the available materials bring the case within the mischief of Section 132, Code of Criminal

Procedure he is at liberty to reject the complaint holding that it is barred by Section 132, Code of Criminal Procedure. If however, he comes to the finding that the accused persons are not entitled to the protection u/s 132, Code of Criminal Procedure, he will proceed with the trial.

9. Subject to the above observations, the Criminal Revisions stand dismissed.