
(1985) 02 OHC CK 0023
In the Orissa High Court

Swapneswar Mohanty

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 06-02-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 114, 394

Citation : (1985) 59 CLT 212 : (1985) CriLJ 1870

Hon'ble Judges : B.N. Misra, J

Bench : Single Bench

Judgement

B.N. Misra, J.—The petitioner was one of the accused in G. R. Case No. 155 of 1976 in the court of the learned S. D. J. M., Talcher. The charge against him was u/s 394 read with Section 114, I. P. C. The learned Magistrate upon consideration of the evidence found the petitioner guilty u/s 394, I. P. C. and sentenced him to rigorous imprisonment for 15 months. In appeal, the learned Sessions Judge, Dhenkanal set aside the judgment of conviction and sentence passed against the petitioner giving him the benefit of doubt. It is seen that in course of investigation into the case under seizure list, Ext. 9, a sum of Rs. 6540/- in cash was seized from the Dhenkisal of the petitioner on 12-6-76. In the statement of the petitioner recorded u/s 313 Cr. P.C. in the trial Court he had stated that his brother had fetched Rs. 6540 from the house and given it to the police and that he himself had given nothing. Accordingly, the learned Sessions Judge while acquitting the accused directed that the cash recovered under Ext. 9 should be confiscated to the State. This direction of the learned Sessions Judge is under challenge in this revision.

2. Upon hearing learned Counsel for the petitioner and learned Addl. Standing Counsel, I am firmly of the view that the direction of the learned Sessions Judge is quite proper in the facts and circumstances of this case. As indicated above, according to the prosecution a sum of Rs. 6540/- in cash was recovered from the Dhenkisal of the petitioner under seizure list, Ext. 9. In course of the trial, the petitioner was specifically asked about the said seizure of cash from his house

and he had clearly replied that he had not given anything to the police, but that his brother had fetched the cash from the house and given it to the police. The learned Sessions Judge is, therefore, right in his observation that the petitioner never claimed the cash to be his and therefore his claim to the cash was not tenable. The brother of the petitioner has not been examined in this case nor has anybody else claimed ownership in respect of the cash seized under Ext. 9. In the circumstances, the direction of the learned Sessions Judge for confiscation of the seized amount to the State is legal and proper.

3. For the reasons stated above, this revision which has no merit is rejected. The impugned direction of the learned Sessions Judge is confirmed.