

(1959) 11 OHC CK 0011

In the Orissa High Court

Case No : Original Criminal Miscellaneous Case No. 12 of 1958

The State

APPELLANT

Vs

Banamali Das

RESPONDENT

Date of Decision : 09-11-1959

Acts Referred:

Contempt of Courts Act, 1971 — Section 1

Citation : AIR 1960 Ori 137 : (1960) 26 CLT 332

Hon'ble Judges : R.L. Narasimham, C.J

Bench : Single Bench

Advocate : Advocate General, for the Appellant; Govt. Advocate, for the Respondent

Judgement

R.L. Narasimham, C.J.—This is a proceeding for contempt initiated against Shri Banamali Das, Additional Superintendent of Police, Cuttack, on the basis of some observations made by my learned brother Rao, J. in Criminal Appeal Nos. 80 and 81 of 1957.

2. The material facts are as follows: One Manu Santra a leading contractor and influential man of village Dhangarpada, P.S. Sadar Cuttack was murdered sometime between 5.30 p.m. and 6 p.m. on the 8th December at the village. After the usual investigation, and committal proceedings, 19 persons were tried in the Court of the Additional Sessions Judge of Cuttack for the offence. Two of the accused persons were (1) Suresh Chandra Pradhan and (2) Lokenath Pradhan. On the same day at about 6 p.m. a station diary entry was made at Lalbag Police Station, Cuttack, by the then A.S.I. in charge Shri G. B. Jena to the following effect:

"343. 6 p.m. One Lokenath Padhan accompanied by his brother Suresh Chandra Padhan, son of Gobardhan Padhan of Dhangarpara P. S. Sadar Cuttack appeared at the Police Station and reported that they had come to Court today for some case matters and at about 4.30 p.m. they both went to the house of Hari Behera of Sheikhabazar to realise some amount from him which he took on loan. At about

5 p. m. they met him at his house and asked him for the money. On this he stated that he paid up his dues and he has nothing to pay. But as they insisted to pay, he became annoyed, assaulted the reporter's brother and threatened them to go away, otherwise he will do more harm and if they again asked for money he will see them as he is a Cuttacki. No marks of injury on the body of Suresh Chandra Padhan. It is a non-cog. Referred them to Court.

.....

Sd. G.B. Jena."

It is obvious that this entry is of great importance in deciding whether the said Lokenath Padhan and Suresh Chandra Padhan participated in the murder of Manu Santra. In fact Suresh took the plea of alibi and stated that he was at Lalbagh Police Station lodging the aforesaid station diary (marked Ext. 10) when the alleged murder took place. The A. S. I. Shri G.B. Jena was examined as prosecution witness in the Sessions trial (P. W. 45) and he stated that none of the accused persons in the Sessions trial had appeared before him at the time of lodging of the aforesaid station diary entry (Ext. 10).

He further stated that there was a departmental enquiry held by the Additional Superintendent of Police Shri Banamali Das about the circumstances under which the said entry was made. Rao, J. seems to have thought that there were prima facie grounds for holding that in consequence of this departmental enquiry the A. S. I. got frightened and that with a view to save his skin he stated before the Sessions Court that none of the accused persons was amongst the informants.

3. There can be no doubt that Ext. 10 is a document of great importance in the Sessions Trial. If really Suresh and Lokenath who had actually figured as accused in the Sessions trial had appeared at Lalbag Police Station at 6 p.m. on that day would not obviously have participated in the murder of Manu Santra at his village of Dhangarpara and the plea of alibi must succeed. The only way in which the prosecution could meet this plea was to persuade the A.S.I. who made the aforesaid entry (Ext. 10) to say that he could not identify the persons who made it.

4. In the notice for contempt issued against the petitioner he was charged with having made the departmental enquiry against the A.S.I. Shri G.B. Jena with a view to nullify the effect of the station diary entry (Ext. 10) and to explain it away in such a manner that the accused Suresh Chandra Padhan may not be able to establish his plea of alibi.

5. If during the pendency of a criminal case against an accused person an important piece of documentary evidence bearing on the innocence of the accused is tampered with or otherwise rendered ineffective by the action of a person, there is obstruction to the due administration of justice and that person may be liable for contempt. But the question here for consideration is whether, on the materials before this Court, it can be reasonably held that the

departmental enquiry admittedly made by Shri Banamali Das was made with a view to explain away the station diary entry in such a manner that the accused Suresh may be prevented from establishing his plea of alibi, or whether it was made bona fide in order to ascertain the truth concerning the entry. In his reply to the show cause notice Shri Banamali Das took the plea that as a superior Police Officer it was his duty to make careful enquiries if a piece of evidence in connection with a criminal case was brought to his notice.

He stated that existence of the aforesaid station diary entry became known to the superior Police Officers only four months after the murder and an enquiry became necessary to ascertain the circumstances under which the entry was made. The only person who could identify the informant was the Police Officer who made the entry, namely the A. S. I., Shri G.B. Jena. The Additional Superintendent of Police therefore made enquiries from him with a view to ascertain whether the said Station diary (Ext. 10) was made bona fide or with any mala fide intention. Apparently the suggestion seems to be that the two accused persons, namely, Suresh and Lokenath while participating in the crime at their village Dhangarpara manoeuvred to get the station diary entry made at Lalbag Police Station with the help of some friends in the hope that it will support their plea of alibi in the future trial.

The learned Sessions Judge seems to have accepted this suggestion. Whatever that may be, in the absence of further materials I cannot hold that the mere holding of a departmental enquiry by Shri Banamali Das was responsible for the A. S. I. deposing before the Sessions Court that neither of the two persons named in the station diary entry was present in the dock as an accused in the Sessions case. It is unnecessary to decide in this proceeding whether the A. S. I.'s evidence on this point is true or false. But the report submitted by the opposite party Shri Banamali Das as soon as the enquiry was completed, exonerates the A. S. I. of any mala fide intention in making the said entry.

It cannot therefore reasonably be urged that under threat of departmental proceeding Shri Banamali induced the A. S. I. to depose before the Sessions Court in the manner he did, with a view to destroy the plea of alibi set up by one of the accused persons. It is the duty of a Police Officer as soon as fresh materials come to light, to reopen an investigation which has already been closed and examine whether the original prosecution report requires any modification or not. This duty continues even after the commitment proceedings are over. In extreme cases even after conviction by the trial Court, if fresh facts come to the notice of the Police Officers concerned -- which have a bearing on the innocence of the convicted person they should, through the Law Officers of Government, bring them to the notice of the appellate Court so that additional evidence may be recorded and the conviction of an innocent person may be avoided.

In rare instances, even after the appeal is disposed of and the convicted persons are sent to jail new facts showing the innocence of those persons may come to the notice of superior Police Officers who would then be justified in holding a

proper enquiry and reporting the matter to the Government so that, the sentence which the innocent persons may be undergoing may be remitted, even though their conviction cannot legally be set aside. This happened in the well known Rohtas case whose sequel is reported in AIR 1933 124 (Privy Council) .

6. Hence, as soon as the attention of the opposite party was drawn to Ext. 10 he was, in duty bound to make a departmental enquiry regarding the circumstances in which the said entry was made if he was satisfied that the informants who made the entry were the same as the persons -- bearing these names who figured as accused before the Sessions Judge he should have taken prompt steps to remove their names from the charge-sheet and secure their release. If on the other hand it appeared that some other persons falsely personated the two accused persons and made the aforesaid entry, this fact should have been noted in the relevant case diary and made available to all concerned.

The power to punish for contempt should not be used to deter superior Police Officers from making legitimate enquiries with a view to find out the truth and with a view to ascertain whether the action of their subordinate in connection with the investigation of an offence was bona fide or not. This power of reopening an investigation to find out the truth or of holding a departmental enquiry against a subordinate police officer should however not be misused for the purpose of rendering ineffective a valuable piece of evidence in favour of an accused which might have come to light subsequently. But there is no material in the present case for taking the view that this was the main object of the departmental enquiry held by Shri Banamali Das.

7. I would, therefore, accept the explanation given by the opposite party, Shri Banamali Das, hold him not guilty and discharge the rule issued against him.

There will be no order of costs.