

Pranab Kumar Pradhan and Another Vs. State of Orissa

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Court : Orissa

Decided On : Apr-17-2013

Appellant : Pranab Kumar Pradhan and Another

Respondent : State of Orissa

Advocate for Pet/Ap. : Mr. N.C. Pati

Judgement :

ORISSA HIGH COURT: CUTTACK CRLMC No.2972 OF 201. In the matter of an application under section 482 of the Code of Criminal Procedure. -----Pranab Kumar Pradhan and another Petitioners -versus State of Orissa Opp. Party For petitioners: M/s N.C. Pati, A.K.Das, M.R. Dash, N. Singh & T. Sahoo. For Opp. Party: Addl. Govt. Advocate. -----Decided on 17.04.2013 ----- PRESENT: THE HONOURABLE SHRI JUSTICE M. M. DAS -----M.M. DAS, J. Seeking quashing of the order dated 6.9.2010 passed by the learned S.D.J.M., Bargarh in G.R. Case No.492 of 2010, by which cognizance of offence under sections 379/411/414/34 IPC was taken against the petitioners, the petitioners have preferred the present Criminal Misc. Case under section 482 Cr.P.C.

2. It appears from the facts of the case that the Sub- Inspector, Town Police Station, Bargarh, upon receiving the information stated to be from a reliable source, about a stolen Xylo Mahindra Car bearing registration No.OR-15-P-6530 has been sold by one Sailendra Sharma to Tanuj Birmiwala, who, in turn, sold it to

one Pranab Kumar Pradhan (petitioner no.1) working as Sub-Inspector of Police, Bargarh, lodged an F.I.R. It is further alleged that after receiving the information, initially the Sub-Inspector made a Station Diary Entry and caused an enquiry, from which, he came to know that the said car is being run at Vedanta Alumina, Lanjigarh on hire. It was also ascertained that the vehicle in question was engaged at Alfalevel (P) Ltd. of Vedanta, Lanjigarh site in place of a Bolero bearing registration No.OR-08-B-2651. The vehicle was given on hire by a Contractor, Jitendra Kumar Mohapatra and brother of Pranab Kumar Pradhan, who was working as a Constable at Special Branch. After verification of the documents of the vehicle, it was ascertained that the Xylo car stands in the name of one Raju Saa, S/O. late Netrananda Saa of College Road, Bargarh. One Upendra Kumar Chhattria was the driver of the vehicle. The said informant Sub-Inspector seized the vehicle on 6.7.2010 in presence of the police witnesses. On lodging of the F.I.R., investigation was started and the I.O. recorded the statement of the said Upendra Kumar Chhattria, the alleged driver of the Xylo car, Dillip Kumar Swain, the Sub-Inspector of Town Police Station, Bargarh and one Ganesh Prasad Kolet, Assistant Sub-Inspector of Town Police Station, Bargarh as well as the said Jitendra Kumar Mohapatra, who has engaged the 3 vehicle in Vedanta Company on hire basis and one Sailendra Sharma, who is alleged to have stolen the vehicle in question. The prosecution case is that on verification of the documents, it was detected that Jitendra Kumar Mohapatra, a Contractor of Bhawanipatna had engaged the Xylo car in Vedanta Company. It was further found that one Kalinga Ojha, Site in-Charge of Alfalevel (P) Ltd. had sent a letter to Praveen Gurdge, Security in-charge, to get a new permanent vehicle pass in favour of said Xylo car of which, the owner was Raju Saa of College Road, Bargarh. After completion of the investigation, the I.O. submitted the charge sheet against four persons for the alleged commission of offence under the aforesaid sections of the Indian Penal Code. After submission of charge sheet, the learned S.D.J.M., Bargarh took cognizance of the aforesaid offence against the petitioners and other two accused persons.

3. Mr. N.C. Pati, learned counsel for the petitioners vehemently urged that a bare reading of the case diary containing the statement of the witnesses examined during the investigation would go to show that there is no iota of material

implicating the present petitioners with the alleged offences. He further submitted that the learned S.D.J.M. without applying his judicial mind mechanically took cognizance of the offences 4 against the petitioners and, therefore, the said order is liable to be quashed and the said case registered on the charge sheet as G.R. Case No.492 of 2010 is also liable to be quashed.

4. Learned counsel for the State, on the contrary, while producing the case diary, submitted that from the charge sheet itself, it is revealed that during the course of investigation, the I.O. visited the spot, perused the seizure list prepared by the Sub-Inspector - Dillip Kumar Swain and collected all documents with regard to the vehicle in question from the R.T.O. Office, Sambalpur. The I.O. also ascertained that there is no person, named as Raju Saa of College Road, Bargarh in whose name, the Xylo car was registered. The said car was stolen by Sailendra Sharma and Raju Gujjar from Jeypore Town in which connection, Vidyadhar Nagar P.S. Case No.225 dated 10.5.2010 under section 394 IPC was registered. From the materials on record, a prima facie case was well made out against the accused - petitioners. From the affidavit sworn to by one Upendra Kumar Chhattra, the alleged driver, it appears that he has stated that he has no knowledge about any sale transaction of the alleged stolen Xylo car.

5. On perusal of the statements of the witnesses recorded under section 161 Cr.P.C. available in the case diary, it appears that Jitendra Kumar Mohapatra gave a statement 5 before the I.O. that he is the owner of Bolero vehicle which was engaged in Alfalevel Company under Vedanta Company. He withdrew the vehicle as it required repairing and requested to engage Xylo vehicle of his Nephew to be engaged in its place on hire basis. Accordingly, the Xylo car was engaged which was being managed by his Nephew. He only stated that he knew that the said Xylo car was purchased by the elder brother of his Nephew, i.e., Pranab Kumar Pradhan (one of the petitioners herein) who is working as a Sub-Inspector. From the statement of the accused, Girindra Pradhan, it appears that he paid the money to purchase the Xylo vehicle at the instance of the accused - petitioner Ino.1. Except the aforesaid two statements, there is no other material to implicate the petitioners with the alleged crime. The learned S.D.J.M. on receiving the charge sheet has mechanically passed the following order on 6.9.2010:6.9.2010. Charge

sheet u/s. 379, 411, 414/34 IPC is received from the I.O. against the accused persons Pranab Ku.Pradhan, Girindra Kumar Pradhan, Tanuj Birmiwal & Ananda Pradhan. Perused the same and found prima facie case is made out against the accused persons. Hence cog. of the offence U/s. 379, 411, 414/34 I.P.C. is taken against the said accused persons..

6. From the above materials and the nature of the order passed by the learned S.D.J.M., it is clear that the learned S.D.J.M. has No.applied his judicial mind before passing the 6 aforesaid order taking cognizance of the offence against the petitioners.

7. It is well settled in law that if the material, on which the prosecution relies, is accepted, no conviction can be recorded against the accused persons against whom the order of cognizance has been passed and proceeding with such a criminal case would amount to abuse of the process of the Court and is liable to be quashed.

8. I, therefore, considering the materials available on record and the nature of the order passed by the learned S.D.J.M. find that this is No.a fit case for taking cognizance against the petitioners as accepting the entire materials collected during investigation along with the statements recorded under section 161 Cr.P.C. of the witnesses in toto canNo.form the basis to convict the petitioners under the aforesaid sections of the Penal Code. Hence, the impugned order, if allowed to stand, would amount to abuse of the process of the Court. Accordingly, the impugned order dated 6.9.2010 taking cognizance of the offence against the petitioners stands quashed. As a consequence, the proceeding in G.R. Case No.492 of 2010 also stands quashed in respect of the present petitioners.

9. The CRLMC is accordingly allowed. 7 M. M. Das, J.Orissa High Court, Cuttack. April 17th, 2013/Biswal.

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