

Manas Kumar Sahu Vs. State

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Court : Orissa

Decided On : Jan-17-2014

Appellant : Manas Kumar Sahu

Respondent : State

Judgement :

CRLMC No.1901 of 2013 & Misc.

Case No.1316 of 2013 08.

17.1.2014 Heard learned counsel for the parties.

This application under Section 482 Cr.P.C.has been filed praying for quashing of the second order of cognizance dated 29.4.2013, passed by the learned J.M.F.C., Basudevpur, in G.R.Case No.138 of 2009 (T.R.No.499 of 2010).taking cognizance against the petitioners under Sections 364/392 I.P.C.The brief facts of the case is that the informant had lodged a written report before the Naikanidihi Police Station, Bhadrak, which was registered as Naikanidihi P.S.Case No.54, dated 27.4.2009, under Sections 342/294/323/ 379/364/506/ 34 I.P.C., alleging therein that on 27.4.2009 the petitioner no.4, who was undertaking the construction work of the informants house as a mason, in order to provide cement, iron rod and other building materials to the informant at a low price, took him in a scooter to Bideipur and from there to Basudevpur and subsequently proceeded to Birusha Chhak.

When the petitioner no.4 could No.provide the building materials as promised, the informant doubted the intentions of petitioner no.4 and accordingly requested him to return back.

It was further alleged that while the petitioner no.4 was pretending to start the scooter and return back, at that time one white Maruti car bearing no.OR-01/5541 arrived at the spot and four to five persons got down from the car, out of which, the informant could recognize petitioner no.2., who is the brother-in-law of mp 2 petitioner no.4.

It was alleged that they abused the informant and tried to press his neck and threatened him with dire consequences and snatched away Rs.70,000/from him and on arrival of local villageRs.the petitioners fled away from the spot.

After investigation, the police submitted chargesheet in the Court of learned J.M.F.C., Basudevpur, vide C.S.No.144, dated 10.9.2010 and the learned Magistrate, considering the same, took cognizance vide order dated 27.09.2010 for commission of offences under Sections 341/323/342/294/506/109/34 I.P.C.against the present petitioneRs.It is the case of the petitioners that during pendency of the proceeding before the learned Magistrate, the A.P.P.filed an application under Section 190(1)(c) of Cr.P.C.to take cognizance of offences under Sections 364/392 I.P.C.along with the other offences, cognizance of which had already been taken earlier.

The petitioners filed objection and the learned Magistrate vide order dated 29.4.2013 has proceeded to take cognizance again for the commission of offences under Sections 364/392 I.P.C., which is the subject matter of challenge in the present application.

Learned counsel for the petitioners submits that after filing of the charge-sheet, the learned Magistrate, on a perusal of the case diary and statements of witnesses recorded under Section 161 Cr.P.C., found there is prima facie material against the present petitioners for commission mp 3 of offences under Sections 341/323/342/294/506/109/34 I.P.C.and accordingly vide order dated 27.9.2010, took cognizance of the said offences.

Therefore, the learned Magistrate had no power to take cognizance for the second time for additional offences under Sections 364/392 I.P.C. In this regard, the learned counsel for the petitioners has relied upon a decision of this Court in *Gobinda Chandra Kuanr and others v.*

State of Orissa (2001) 21 OCR-549, where in a similar case, on the basis of the charge-sheet submitted, the learned Magistrate took cognizance of offences under Section 341/323/34 I.P.C. After passing of the order of cognizance, the learned A.P.P. appearing for the State filed an application praying before the Court to take cognizance under Section 316 I.P.C. and the learned Magistrate vide order dated 29.11.1997 took cognizance again for the offences under Section 316 of I.P.C. This Court relying upon a decision of the apex Court in *Raj Kishore Prasad versus State of Bihar and another, (1996) 11 OCR (SC) 139* came to hold that it was open for the Magistrate to take cognizance of offence under Section 316 of the Penal Code after submission of chargesheet looking into the case record.

If the learned Magistrate failed to take cognizance at that stage and took cognizance of offences in respect of which charge-sheet had been filed, he has no authority to take further cognizance on the basis of an application filed by the A.P.P., in exercise of powers under Section 323 of the Cr.P.C., as by that time enquiry was over and trial had No. commenced.

It was open for the learned mp 4 Magistrate to take cognizance of the other offence at the time of trial and has no jurisdiction to take cognizance again in respect of any other offence after conclusion of inquiry and before commencement of trial.

Learned counsel for the petitioners has also relied upon a recent decision of the apex Court in *Dharam Pal and ORS. versus State of Haryana and Anr.*

2013 (3) Crimes 356 (SC). wherein the Honble Court has affirmed the settled principle of law that the cognizance of an offence can only be taken once.

Considering the submissions made and applying the principles of law as discussed above to the facts of the present case, I have no hesitation to hold that

the impugned order of cognizance, passed by the learned J.M.F.C., Basudevpur, dated 29.4.2013, in G.R.Case No.138 of 2009 (T.R.No.499 of 2010).taking cognizance again for commission of offences under Sections 364/392 I.P.C.is per se illegal and without jurisdiction.

Accordingly, the impugned order of cognizance dated 29.4.2013, passed by the learned J.M.F.C., Basudevpur, in G.R.Case No.138 of 2009 (T.R.No.499 of 2010).taking cognizance against the petitioners under Sections 364/392 I.P.C.is hereby quashed.

CRLMC and misc.

case are accordingly disposed of.

Issue urgent certified copy as per rules.

. S.C.Parija, J.

mp

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