

Manda Marandi and ors. Vs. State of Orissa

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Court : Orissa

Decided On : Jan-07-2008

Reported in : 105(2008)CLT210; 2008(I)OLR421

Judge : S.C. Parija, J.

Appellant : Manda Marandi and ors.

Respondent : State of Orissa

Disposition : Petition allowed

Judgement :

S.C. Parija, J.

1. This application under Section 482, Cr.P.C has been filed by the Petitioners assailing the Order Dated 25.05.2002 passed by the Learned S.D.J.M., Sadar, Baripada, in G.R. Case No. 80 of 2002, taking cognizance of offences under Sections 143, 341, 353, 506 I.P.C. and Section 7 of the Criminal Law (Amendment) Act and issuing process against the Petitioners.

2. The case of the Petitioners, in brief, is that an F.I.R. was lodged by the Sub-Collector, Baripada at Baripada Town Police Station, alleging therein that on 31.01.2002 at about 12.30 P.M., while the office work in the Collectorate of Baripada was in progress, a group of women numbering about 20 to 30 led by one

Charima Uhagadai, President, Nari Sriemi Samaj, Brahmanposi, Sukuruli, entered inside the Office premises without any intimation and squatted in front of the Office chamber of the Collector and District Magistrate, Mayurbhanj, by forming an unlawful assembly and obstructed entry into the office. In the said F.I.R., it was also alleged that provocative words were used with the intention to disrupt the office work and the group of women also demanded a written assurance from the Collector, Mayurbhanj to fulfill their demand regarding closure of the sponge iron factory at Pandasil, Sukuruli. They also obstructed the Collector from leaving the office and prevented him to go back his office chamber and shouted slogans.

3. For better appreciation, the impugned F.I.R. lodged by the Sub-Collector, Baripada, before the Inspector-in-Charge, Town Police Station, Baripada, dated 31.01.2002 is extracted below:

Sir,

I am to report that today at about 12.30 P.M. while the office work in the Collectorate, Baripada was in progress, a group of Ladies numbering about 20 to 30 led by Charima Uhagarai, President, Nari Srimai Samaj, Brahmanposi entered inside the Office premises without any intimation, squatted in front of the office chamber of the Collector and District Magistrate, Mayurbhanj by forming an unlawful assembly and obstructed entry into the office and caused intimidation. They also used provocative words and incited violence with an intention to disrupt the office work. They demanded written assurance from the Collector and District Magistrate to fulfill their demands regarding closure of the Sponge Iron Factory at Pandarsil, Sukuruli. Further, they continued with their un-lawful activities and obstructed Collector from leaving his office and further, when the Collector returns to his office Chamber, they squatted in front of the entrance to his office Chamber and started giving slogans.

Thus they restrained officials as mentioned from performance of their duties and caused obstruction.

4. On the basis of the aforesaid allegations made in the F.I.R., Baripada Town P.S. Case No. 23 of 2002 was registered under Sections 143, 341, 353, 506 I.P.C.

and Section 7 of the Criminal Law (Amendment) Act, which was subsequently registered as G.R. Case No. 80 of 2002 in the Court of the Learned S.D.J.M., Sadar, Baripada.

5. Sri S.P. Mishra, Learned Senior Counsel appearing for the Petitioners submits that the nature of the incident and the allegations made in the impugned F.I.R. does not make out a case against any of the accused persons, including the Petitioners, and further the statements recorded by the police during investigation, under Section 161 Cr.P.C. does not disclose any involvement of the accused persons, including the Petitioners, in the said incident and therefore, even accepting the statements made in the F.I.R. to be true, no offence is made out. On that basis, it is pleaded that continuance of the criminal proceeding against the Petitioners would be an abuse of the process of the Court.

6. Sri Mishra further submits that the statement of witnesses recorded by the police during investigation under Section 161 Cr.P.C. does not implicate any of the Petitioners and that all such statements are bald and vague and it only reveals that the alleged act was committed by about 20 to 30 women. Hence the impugned order of cognizance passed by the Learned S.D.J.M., Sadar, Baripada, suffers from non-application of mind and has been mechanically passed without appreciating as to whether there is prima facie any material to make out a case against the Petitioners.

7. In the present case, the impugned order of cognizance passed by the Learned S.D.J.M., Sadar, Baripada, does not reveal the subjective satisfaction of the Magistrate in taking cognizance of the offences alleged against the Petitioners and issue of process against them. The relevant portion of the impugned order of cognizance is extracted below:

There is a prima facie case Under Section 143/341/353/506(ii) I.P.C./Section 7 of the Cr. L.A. Act to proceed against the accused persons. Hence cognizance is taken of the said offences.

8. It is well settled that judicial process should not be an instrument of oppression or needless harassment. There lies the responsibility and duty on the Magistrate to

find out whether the concerned accused should be legally held responsible for the offences charged. Only on satisfying that the law casts liability or creates offence against the persons impleaded then only process would be issued. At that stage the Court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the complainant as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice.

9. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made *prima facie* establish the offence. Section 482 does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the Section which merely recognizes and preserves inherent powers of the High Courts. All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle '*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*' (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the Section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised *ex debito*

justitiae to do real and substantial justice for the administration of which alone Courts exist. Authority of the-Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of the Court, to allow any action which would result in injustice and prevent promotion of justice, in exercise of the powers Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the Court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

10. In the case of State of Karnatak v. L. Muniswamy and Ors. reported in : 1977 CriLJ1125 , the Supreme Court has observed that the wholesome power under Section 482, Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Supreme Court observed in that case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. The aforesaid ratio of the case has been followed in a large number of subsequent cases of Apex Court and other Courts.

11. In the case of Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao reported in : 1988 CriLJ853 , the Supreme Court has observed as follows:

7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the incontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in' a particular case to consider whether it is expedient and in the interest of justice to

permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

12. In the case of State of Haryana and Ors v. Bhajan Lal and Ors. reported in : 1992 CriLJ527 , the Supreme Court while discussing the scope and ambit of the inherent powers under Section 482 Cr.P.C. laid down the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice. The Hon'ble Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

13. In the case of Zandu Pharmaceutical Works Ltd. and Ors. v. Mohd Sharaful Haque and Anr. reported in : 2005 CriLJ92 , the Supreme Court has observed as follows:

It would be an abuse of process of the Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, Court would be justified to quash any proceeding if it finds that initiation/ continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

14. In the present case, on perusal of the allegations made in the F.I.R. and the statements recorded by the police during investigation, under Section 161 Cr.P.C., the same does' not reveal any specific offence against any of the Petitioners. In the statement of witnesses recorded under Section 161 Cr.P.C. no specific allegation is made with regard to any offence against the Petitioners and all the statements are bald and vague and are same or similar in its tenor and content.

There is no material on record to prima facie connect the Petitioners to the offences alleged in the impugned F.I.R.

15. Keeping in view the nature of allegations made in the impugned F.I.R. and the offences alleged therein and considering the materials on record, including the statement of witnesses recorded during investigation under Section 161 Cr.P.C. I am of the view that no prima facie case is made out against the Petitioners, so as to warrant continuance of the criminal proceeding against them. Further taking into consideration the special features of this case that all the Petitioners are women and the incident is of the year 2002 and all the allegations against them are vague and the chances of an ultimate conviction is bleak, no useful purpose would be served by allowing the criminal proceeding to continue against them..

16. Accordingly, this application under Section 482 Cr.P.C is allowed and the impugned order of cognizance dated 25.5.2002 passed by the Learned S.D.J.M., Sadar, Baripada, in G.R. Case No. 80 of 2002 and the criminal proceeding initiated thereunder is hereby quashed.

17. The CRLMC is accordingly allowed.