

Paramananda Mohapatra Vs. the State

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Court : Orissa

Decided On : Apr-11-1968

Reported in : AIR1968Ori144; 34(1968)CLT627

Judge : S.K. Ray, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 476 and 479A; India Penal Code (IPC) - Sections 191, 195(1) and 199

Appeal No. : Criminal Revn. No. 178 of 1966

Appellant : Paramananda Mohapatra

Respondent : The State

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : R.N. Misra and ;R.C. Patnaik, Advs.

Disposition : Petition allowed

Judgement :

ORDER

S.K. Ray, J.

1. The petitioner has been convicted under Sections 193 and 199. I P. C.. and sentenced to undergo Rule 1 for six months on each count and to pay a fine of Rs.

250 on each count, both the sentences to run concurrently In default of payment of fine the petitioner is to undergo Rule 1 for three months on each count

2. The petitioner was tried under the aforesaid sections in the Court of the Sub-divisional Magistrate. Sadar. Cuttack, in case No 751-C-2/720 T of 1961. cognizance having been taken on those offences on the basis of a complaint petition filed by the High Court of Orissa, Being convicted and sentenced as aforesaid by the S. D. M., Cuttack, the petitioner filed an appeal (Cr. Appeal No. 2/C of 1964) which was dismissed by Sri U. N. Misra, Additional Sessions Judge, Cuttack, by his judgment dated 25-2-66 passed in the said appeal.

3. The facts leading to the prosecution of the petitioner are shortly these:

The petitioner was the outgoing Sar-panch of Bolagarh Gram Panchayat in Khurda Sub-division. He filed an application under Article 226 of the Constitution of India, challenging the action of the Election Officer, Bolagarh, in proceeding with the election of the new Sarpanch and Naib Sarpanch for the aforesaid Grama Panchayat, notwithstanding the decision of the Sub-divisional Magistrate. Judicial. Khurda, declaring the election of the members of the Grama Panchayat to be void under Rule 24 of the Grama Panchayat Rules and directing fresh elections.

The writ application which was filed on 14-12-60 was registered as O. J. C. 277/60. This application was moved by Sri D. Sahu, Advocate, and it was submitted that the Election Officer who was the Sub-divisional Officer of Khurda in disregard of the order of the S D M (Judicial). Khurda declaring the election of the members to the Grama Panchayat to be void, proceeded with the election of the Sarpanch and the Naib Sarpanch. To substantiate this argument, with the permission of this Court, a new paragraph (para 12) was added to the application under Article 226. This paragraph runs as follows:

'That the petitioner went with Sri G. S. Patnaik, pleader and met the S.D.O.. Khurda, and showed him the order of the S. D. M. Khurda. but the S.D.O.. remarked that it is an illegal order. After the said illegal election of the opposite parties 2 and 3 as Sarpanch and Naib Sarpanch, the petitioner preferred a petition and engaged two lawyers. Sri G. S. Patnaik, Pleader and Sri Jadumani Patnaik,

Mukhtar, and offered the petition to the Sub-divisional Officer, Khurda, on 12-12-60 through Sri G. S. Patnaik. Pleader, but the S.D.O. did not accept the petition. The petition is filed herewith as annexure 2 along with the Vakalatnama signed by the lawyers.' The facts contained therein were proved by an affidavit sworn to by Paramananda Moha-patra the petitioner himself on oath before the Oaths Commissioner of this Court on 15-12-60 or which date the same was filed in Court Thereupon the S.D.O.. Khurda was called upon to make his statement in regard to the allegations touching him The S.D.O Khurda Sri A K Roy. submitted his explanation denying the truth of the averments that he told Sri G S Patnaik. pleader of the petitioner. Paramananda that the order of the S.D.M. was illegal when it was shown to him and that he refused to receive any petition, which was offered to him on 12-12-60 by the petitioner's lawyer. In corroboration of his written explanation he enclosed therewith a letter sent to him by Sri G. S. Patnaik, dated 21-12-60. After receipt of this explanation, the O.J.C. was not pressed by the petitioner's counsel for reasons disclosed in the order which was passed following the motion on 22-12-60. That order, which is Ext. 12 in this case, runs thus:

'Mr. D Sahu says that this O.J.C. is not pressed and that the order of the S.D.M. is now being implemented. It is accordingly dismissed for non-prosecution. The interim stay order dated 15-12-60 is vacated.'

'In view, of the explanation of the S.D.O., Khurda, which is supported by a copy of the letter of Sri G. S. Patnaik, pleader, Khurda, let a separate proceeding be drawn up against Paramananda Mahapatra for having intentionally made a false statement in paragraph 12 of his petition supported by an affidavit on 15-12-60. He should show cause why he may not be prosecuted for swearing a false affidavit. Ask the S.D.O. to send the original letter sent to him by Mr G S. Patnaik, pleader.'

This order was signed by both the learned Judges ,onstituting the Division Bench who were the then Chief Justice (Narasimham, C. J.) and Barman, J. (as he then was) before whom the O. J. C. proceeding was pending and was being dealt with. In pursuance of that order a senarate proceeding under Section 476. Cr. P C. was started which was numbered as Original Cr. Misc. 2/61. This proceeding was in the nature of an enquiry under Section 476. Cr. P. C. and was dealt with by the

then Chief Justice alone, and by his order dated 14-1-61 complaint was directed to be sent to the S. D. M., Judicial, Cuttack, for prosecution of the petitioner Paramananda for offences under Sections 199 and 193, Indian Penal Code, for having made false statements in the affidavit in para 12 of the O.J.C. petition dated 12-12-60.

4. It appears from Exts. 14, 15 and 16 that the then Chief Justice took keen interest in the careful drafting of the complaint petition and putting the Deputy Registrar in charge of the case in general for purposes of piloting its prosecution, himself took great care in giving written instructions as to the number and class of witnesses to be examined and the documents to be proved in support of the prosecution case. The Deputy Registrar also was directed to keep watch over the progress of the case and to keep the Chief Justice continuously informed about it.

These exhibits which had no direct relevancy to the proof of the case were introduced into prosecution evidence and, as complained by the counsel for the petitioner, purposefully to make him aware of the intense interest of the Chief Justice in the prosecution, and of his direct association with its conduct, and that must have affected, it is argued the impartial attitude of the Magistrate. The alleged effect of it, on the mind of the Magistrate may or may not be true, but it cannot be said that the apprehension of the accused in that regard was baseless. The gravamen of the charge was that the two averments of fact made in the added paragraph of the writ petition were false. One was as follows:

'Paramananda Mohapatra accompanied by his pleader Sri G. S. Patnaik met the S.D.O. on 11th December, 1960, and showed him the order of the S.D.M. (Judicial), and thereupon the S.D.O. remarked that it was an illegal order.'

This was the subject matter of the first charge and the second statement which was the subject matter of the second charge was as follows

'That Paramananda Mohapatra again went to the S.D.O. with his Mukthar on 12th of December, 1960 and offered him a petition challenging the election of the Sarpanch and the Naib Sarpanch to the Bol-garh Grams Panchayat and the S.D.O. refused to accept the petition.'

5. The defence was firstly that the institution of the prosecution is bad due to non-compliance of the mandatory requirements of Section 479A, Cr. P. C. which alone applies to the exclusion of Section 476, Cr. P. C. and secondly, that the statements in the impugned affidavit being true, the charge of swearing false affidavits intentionally must fail.

6. The prosecution examined 7 witnesses including the two lawyers of the petitioner and the S. D. O. who are respectively P. Ws. 4, 5, and 6. The defence examined one witness who is Sri Latifur Rahman, Advocate of Puri Bar. It is said that on the basis of the testimony of P. Ws. 4, 5 and 6 and of D. W. 1, the allegations in the charges have been proved to be true.

7. The first question raised in this case is whether Section 476, Cr. P. C. was rightly invoked by the High Court, due to the bar contained in sub-section (6) of Section 479A of the Code Sub-section (6) runs as follows:

'479A (6). No proceeding shall be taken under Sections 476 to 479 inclusive for the prosecution of a person for giving or fabricating false evidence, if in respect of such a person proceedings may be taken under this section.'

The point to decide, accordingly, is whether appropriate proceedings could be adopted under Section 479A against the petitioner, for if that could be taken then the action taken under Section 476 would be illegal.

8. There is no dispute that if the factual allegations made in the affidavit of the petitioner filed by way of amendment of the writ petition are untrue, that would amount to intentionally fabricating false evidence for the purpose of being used in the writ proceedings and thereby the offences under Sections 191 and 199, I.P.C., would be clearly made out. One prerequisite for application of Section 479A, is that those offences must have been committed by a person appearing before a civil, criminal or revenue court as a witness. In such cases the provisions of Section 479A are attracted thereby excluding the operation of Section 476 It has been laid down in *Dr. B. K. Pal Chaudhury v. State of Assam*, AIR 1960 SC 133 that the court intending to make a complaint, has to record a finding that in its opinion a person appearing as a witness hat intentionally given false evidence and

that for the eradication of the evils of perjury and in the interests of justice, it is expedient that such witness should be prosecuted. Thus, the person sought to be complained against must be a witness before the Court which makes the complaint. It has also been held in AIR 1964 SC 725, Babulal v. State of Uttar Pradesh that sub-section (1) of Section 479A has a limited operation, it applies only to the prosecution of a witness appearing before the Court who has intentionally given false evidence, or has intentionally fabricated false evidence for the purpose of being used, in any stage of the judicial proceeding. The sub-section (meaning sub-section (1) > may, therefore, be resorted to only if offences covered by Sections 191, 192 and Section 193, I.P.C. and allied offences under Sections 194, 195 and 199 and the like are committed by a witness appearing before a Court in course of judicial proceeding pending before it. The phraseology used in Section 479A is plain and unambiguous. It excludes the jurisdiction of the Court to proceed under Sections 476 to 479, in respect of offences specified in Section 195(1)(b) and (c) only where they are alleged to have been committed by a person appearing before the Court as a witness.

Mr. Justice Hidayatullah (as he then was) while delivering the judgment in the case of Baban Singh v. Jagdish Singh, 1967 SCD 140= (AIR 1967 SC 68) has also said the same thing in the following terms:

'In respect of such offences (under Sections 192 and 193) when committed by a witness, action under Section 479-A alone can be taken'

9. Since the petitioner was not a witness in any proceeding relating to the writ application before the High Court, Section 479A, Cr. P C. would not be attracted. Accordingly, the contention that this is a case where Section 479A applies, must fail. It necessarily follows from the above that the proceedings under Section 476 were rightly adopted by the High Court before lodging the complaint. Even then, two objections arise to the legality of that proceeding. The first is that the necessary findings required to be recorded under Section 476. Cr. P, C. which alone empowers the Court concerned to lodge a complaint and the Magistrate to take cognizance of the offence, are wanting in the present case. The order in the original Cr. Misc. Case 2/61 does not disclose any such finding. It is incumbent

upon the Court which embarks upon an enquiry under Section 476 to record findings that an offence referred to in Section 195(1)(b) or (c) of the Cr. P C appears to have been committed in or in relation to a proceeding in that court and that it is expedient in the interests of justice that an enquiry should be made into such alleged offences. The learned Chief Justice while directing lodging of complaint petition held as follows:

'As these statements have been sworn on affidavit and as they are contradicted by the statement of the Sub-divisional Officer (who has also filed an affidavit in this Court) and by the statement of the Mukhtar and the Pleader concerned, I think there are sufficient grounds to initiate the prosecution of the opposite party Paramananda Mahapatra for an offence under Section 199/193, I.P.C. Serious allegations against a public officer, of flouting the orders passed by a competent judicial authority, viz., the Sub-divisional Magistrate (Judicial) were made and these have been found to be prima facie untrue. Swearing of false statements on affidavits. before this Court, with a view to secure admission of an application under Article 226 of the Constitution is a serious matter and I think in the interests of justice Paramananda Mahapatra should be placed on trial.'

There is thus no finding that in view of the learned Chief Justice it was expedient in the interests of justice that an enquiry should be made. He merely says that Paramananda Mahapatra should be placed on trial in the interests of justice. 'Interests of justice' is one matter, but 'expediency in the interests of justice' is another matter. There are cases where though it would serve interests of justice to place a man on trial, nevertheless expediency may dictate against such prosecution. Consequently before lodging a complaint, the Court must be satisfied that not merely the bare interest of justice is served, but also that it is expedient if the interest of justice to prosecute. The Court which is lodging the complaint must be satisfied about this expediency and clearly record that jurisdictional finding before any step is taken for prosecution.

10. The second objection to the legality of this proceeding is that the enquiry was held under Section 476 by the then Chief Justice alone. The offence admittedly is alleged to have been committed in or in relation to a proceeding before a Court

comprising of two judges of whom the Honourable the Chief Justice was only one. When Section 476 says that before filing the complaint the Court is to form its opinion on all aspects and give its finding on matters referred to in Section 476, it must be the opinion of both the members comprising the Division Court. On a careful reading of the language of Section 476, Cr. P. C. it will appear that the Court before whom a judicial proceeding was pending in relation to which offences referred to in Section 195(1) (b) and (c) have been committed, has the exclusive duty of holding preliminary enquiry and recording necessary findings. The expression 'such court' following the first part of the section, viz., 'when any civil, revenue or criminal court is.....of opinion.....that an enquiry should be made into any offence.....which appears to have been committed in or in relation to a proceeding in that court' makes it abundantly transparent that the Court which was in seisin of the judicial proceeding shall make the enquiry and record the finding. The satisfaction of one member of the Court could not be the satisfaction of the Division Court, nor the findings of one member will be the finding of the Court.

11. The High Court Rules which provide for matters which can be heard and disposed of by a single Judge, do not confer any power or authority or jurisdiction on a single judge in regard to suo motu enquiry under Section 476, Cr. P. C. into an offence referred to in Section 195(1)(b) or (c) committed in relation to a proceeding before a Division Court. Holding of such enquiry or recording of findings as required under the Section must be the act of the Court, and this being a judicial function, the opinion formed by one member of the Court, consisting of two Judges, to the complete exclusion of the other, will not amount to compliance with the mandatory requirements thereof. It may be that while one member opines that it is expedient in the interests of justice to prosecute the other may disagree. In this view of the matter and the position of law the initiation of the criminal prosecution on the basis of an enquiry under Section 476 made by the Chief Justice alone appears to be illegal.

12. A portion of the affidavit which comprises the subject matter of the first charge which is said to be false is as follows:

'That Paramananda Mahapatra accompanied by his Pleader Sri G. S. Patnaik met the S.D.O., and showed him the order. Thereupon the S.D.O. remarked that it was illegal order.'

The second charge relates to another part of the affidavit in respect of another incident relating to 12th of December, 1960 which runs as follows:

'When Paramananda again went to the S.D.O. accompanied by Sri G. S. Patnaik and Sri Jadumani Patnaik and offered him a petition, the S.D.O. refused to accept the petition.'

P. W. 4 Jadumani Patnaik deposed as follows with regard to the incident on 11th.

'On 11-12-60 at about 8.30 a.m. I met the S.D Order . and told him that the Gram Pan-chayat election of the Bolagarh G. P. had been declared null and void by the S.D.M. and I requested him to stop the election of the Sarpanch and Naib Sarpanchship which was going to be held on that day at 9 A.M. I had gone there with a written application. Ultimately when I met the S.D.O he did not see the petition The S.D.O. told me that he was not aware of the decision of the S D.M. and actually indicated his surprise over the matter. Notwithstanding the surprise of the S.D.O in the matter and mv anxietv to move the application it could not be moved

The S.D.O. had seen me holding the certified copy of the order before he eot inside. From all these sequence of works I was left with the feelins that the S.D.O. was not in a mood to receive my petition.'

P. W. 6 deposed with regard to the incident of 11th as follows:

'I do not remember the exact date, but I remember Jadu Babu takins car to my residence-cum-office in connection with Bolgarb G P election matters 1 do not exactly remember But I remember that at about 8 O' clock in the evening, while I was having tea in my residence on the verandah he came in connection with this G. P. election matter and mentioned about the S D M 's judgment.'

P W 4's further evidence is that he wanted to show the certified copy of the order of the S D M. declaring the G. P. election to be null and void to the S.D.O. and during his discussion on the matter with the S.D.O. he called out to the petitioner to give him the certified copy of the order intending to produce it before the S.D.O. Earlier he had stated that he had informed the S.D.O. about the decision of the S.D.M. regarding the invalidity of the G. P. elections and within his hearing had called out to the petitioner to bring the certified copy and the petitioner supplied him the copy immediately thereafter. The S. D Order had just moved into the room and had seen the certified copy of the order in the hands of this witness. Accordingly he reported to the petitioner (his client) that in spite of all his efforts he had failed to obtain an order from the S.D.O who was not in a mood to receive the petition in this state of evidence the portions of the affidavit which is the subject matter of the first charge cannot be said to be false: on the contrary they are substantially true.

13. With regard to the incident of the 12th December P W. 4 says that on 12-12-60 a petition was drafted by him and his junior (P W 5) for presentation to the S.D Order and it was arranged that both of them would move the petition, but opportunity did not come until 2 P M P W 5 went alone to move the petition as P W 4 was held up in another Court. He was informed by P W 5 that the SDO. went to meet the Revenue Minister P W 5 corroborates this by saying that he moved (sic) petition on 12-12-60 at 2 PM but the S D O. said that it could not be accepted as he was then going to see the Revenue Minister. P.W 6 deposed to this effect:

'On the day 1 said to P.W. 5 that I was going out. I had no time to receive the petition.'

This in my view is an admission of the allegations of the petitioner in his affidavit that the S.D Order refused to accept the petition. In view of this evidence it is incomprehensible to me as to how one could say that the averments in the affidavits which are the subject matter of the second charge are false. Things happened at Khurda either in his presence or in his immediate vicinity of which he witnesses a part and was informed by his lawyer about the rest. The petitioner thus treated, comes to Cuttack and instructs his lawyer who drafts the affidavit in

English language choosing his own diction, and accordingly, it cannot be expected that the language used in the affidavit which is alleged to be false would be identical with the language of the accused in the dork in such circumstances, if what the prosecution witnesses say substantially agrees with the averments in the affidavit, it would not be right and correct to nomenclature the affidavit as false or to call swearing of such affidavit as intentional fabrication of false evidence. In my judgment in these circumstances, no offence has been committed either under Section 193 or Section 199 I.P.C. Therefore in my view of the law and facts as stated above, there is no case for convicting the petitioner. Accordingly, the judgments of conviction and sentence passed on the petitioner are set aside and the revision application is allowed and the petitioner is acquitted.

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