

S.K. Ghosh Vs. the State and anr.

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Court : Orissa

Decided On : Mar-10-1969

Reported in : AIR1969Ori228; 35(1969)CLT496; 1969CriLJ1149

Judge : A. Misra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 235, 342, 367 and 561A

Appeal No. : Criminal Misc. Case Nos. 158 to 162 of 1967

Appellant : S.K. Ghosh

Respondent : The State and anr.

Advocate for Def. : Govt. Adv. and ;K.C. Jagadev Ray, Adv.

Advocate for Pet/Ap. : B.M. Patnaik and ;S.S. Basu, Adv.

Disposition : Petition allowed

Judgement :

ORDER

A. Misra, J.

1. The petitioner has filed these five applications Under Section 561-A Cr. P. C. for expunging certain derogatory remarks against him made by the learned Munsif-

Magistrate, 1st Class, Khurda in his judgments in G. R. Cases Nos. 369, 421, 422, 467 and 516 of 1965. At the relevant time, petitioner was working as Inspector General of Police, Orissa. All these cases were heard together for the sake of convenience.

2. The brief facts which gave rise to the aforesaid G. R. Cases are as follows: Shri Dukshishyam Singh Samant, who figures as opposite party No. 2 in each of these criminal misc. cases, was working as the Fire Station House Officer, Khurda. He was transferred and Shri Banshidhar Pradhan who was examined as P. W. 4 in G. R. Cases Nos. 369, 421 and 422 of 1965 and as P. W. 1 in G. R. Cases Nos. 467 and 516 of 1965 was posted in his place and directed to relieve and take over charge from Shri Singh Samant. Shri Pradhan commenced taking over charge from his predecessor on 19-6-65. During the process of taking over charge, shortage of some petrol and cash of Rupees 401/- was detected which Shri Singh Samant could recoup only on 25-5-65, on which (date-sic), the taking over charge was completed.

On the F. I. R. lodged by Shri Pradhan on 3-8-65 alleging criminal misappropriation in respect of cash and petrol by his predecessor, investigation was taken up and ultimately a chargesheet was submitted Under Section 409, 465 and 467, I. P. C. which was registered as G. R. Case No. 369 of 1965. During investigation, the I. O. alleging to have detected further instances of misappropriation of money and petrol, drew up two more F. I. Rs. (Exts. 24 and 25) on 31-8-65, and after investigation, submitted two further charge-sheets which were registered as G. R. Cases Nos. 421 and 422 of 1965. Similarly, in the course of further investigation, the I. O. alleging to have detected further instances of criminal breach of trust and misappropriation of petrol drew up two further F. I. Rs. (Exs. 21 and 22) on 29-9-65 and 3-11-65; investigated and submitted two more chargesheets which were registered as G. R. Cases Nos. 467 and 516 of 1965 respectively.

3. The learned Munsif-Magistrate who tried all these five cases recorded one set of evidence in the three G. R. Cases Nos. 369, 421 and 422 of 1965 and another set of evidence in G. R. Cases Nos. 467 and 516 of 1965, but disposed of the five

cases by five separate judgments dated 13-5-67 acquitting the accused in all of them. The procedure adopted by the learned Magistrate of recording one set of evidence with respect to trial of three separate cases and another set of evidence in the trial of two other separate cases, each case relating to a distinct offence unconnected with the other, apparently is not one warranted by the provisions of the Code of Criminal Procedure, For the present purpose, however, this aspect is not very material, because the applications are confined to expunging of certain derogatory remarks against the petitioner in each of these different judgments and the regularity or otherwise of the trials or the orders acquitting the accused is not in question.

4. The remarks in respect of which petitioner feels aggrieved in each of these cases and prays for expunging them are detailed below.

G. R. Case No. 369/65 against which Crl. Misc. Case No. 158/67 has been filed:

'(a) From these materials it is not difficult to come to an inference that the I. G. of Police is personally interested in roping the accused.

(b) This itself shows how the I. O. is trying to build up a false case by manipulation. The I. O. is conscious that he has got full support of the I. G, of Police and so he does not shirk even to commit any fraud for the purpose of building a false case and thus to please his boss.'

G. R. Case No, 421/65 against which Crl. Misc. Case No. 162/67 has been filed:

'The personal interest of the I. G. of Police in starting case against the accused is thus exposed.'

G. R. Case No. 422/65 against which Crl. Misc. Case No. 161/67 has been filed:

'(a) These materials go to show with what amount of interest the I. G. of Police pioneered the prosecution against the accused.

(b) Therefore, the case of the defence that the I. O. was set up by the I. G. to foist case against him appears to be true.

(c) Ex. 4, therefore, goes to show how the I. O. has taken up the case to somehow book the accused and thus satisfy his boss.'

G. R. Case No. 467/65 against which Crl. Misc. Case No. 159/67 has been filed:

'In my opinion, he is a liar, making statements at the dictation of some external forces and with a view to falsely implicate the accused. The correspondence between P. W. 16 and the I. G. relating to the transfer of the accused from Cuttack office as envisaged in Exs. F and G clearly points out the revengeful attitude taken by the I. G. towards the accused. The letter (Ex. G) addressed by the I. G. Shri S. K. Ghosh to P. W. 16 (F. O.) dated 27-3-65 is in a dictatorial tone and in a most impolite language which is unwarranted and not expected from an officer of the rank of an I. G. while addressing to an officer of the rank of an S. P. in response to an humble letter like Ex. F dated 23-6-65. Ex. G exposes the vindictive attitude taken by the I. G. Shri S. K. Ghose towards the accused. The I. O. (P. W. 19) admits that he was instructed by the I. G. to take up investigation against the accused and so he came to Khurda and lodged the F. I. R. (Ex. 21) on 3-11-65 at the P. S. and took up investigation himself. So, when the I. G. is interested to spoil the career of the accused, it is not difficult for the I. O. to trust statements in the mouths of his subordinates (P. Ws, 1 to 7 and 11) and to build up a false case.'

G. R. Case No. 516/65 against which Crl. Misc. Case No. 160/65 has been filed--_

'The correspondence between P. W. 16 and the I. G. of Police relating to the reasons for the transfer of the accused from the confidential section of the office of the F. O. (P. W. 16), as envisaged in Exs. F and G clearly indicates the revengeful attitude taken by the I. G. towards the accused. The letter (Ex. G) addressed to P. W. 16 dated 27-3-65 by the I. G. Shri S. K. Ghosh is a clear proof of the vindictive attitude taken by the I. G. against the accused. The letter (Ex. F) dated 26-3-65 is in a most humble tone and so the bitterness in the language used in Ex. G is unwarranted and in my opinion is an abuse of such a high office. It is lamentable that in his anxiety to send the accused away from Cuttack, he has crossed the permissible limits of the decorum of his office. Taking these circumstances into consideration, there seems to be some force in the defence contention that the I. G. of Police is instrumental in foisting this false case through the agency of his

subordinate staff. So when an officer of the rank of an I. G. is interested to put the accused into trouble, it is not difficult for the I. O. to thrust statements in the mouths of his subordinates (P. Ws. 1 to 7 and 11) and build up a false case.'

5. For petitioner, it is contended that he was not examined and that his conduct was not the subject-matter for consideration in any of these proceedings. Besides, it is urged that the remarks are absolutely unnecessary and irrelevant for decision in any of these cases and the evidence on record does not even remotely connect the petitioner with the initiation of the cases or justify the re-marks made. Lastly, learned counsel for petitioner submits that the remarks are not only injudicious but depart from any standard of sobriety and moderation. On the other hand, for opposite parties, it is urged that when the results of the proceedings have become final on the findings arrived at, the remarks to which exception is taken cannot be dissociated from the reasonings, on the basis of which the learned Magistrate arrived at his conclusions.

It is further stated that in these cases there is sufficient material on record to justify the remarks. Lastly, it is emphasised by learned counsel appearing for opposite parties that it being a well-recognised rule that judges and Magistrates must be allowed to perform their functions freely and fearlessly, any interference with their observations in the course of arriving at their conclusions will be highly detrimental to the sense of freedom and independence expected of a judicial officer in discharge of judicial functions.

6. The power of the High Court in exercise of its inherent jurisdiction to expunge remarks made by a lower court, if it be necessary to do so, to prevent abuse of process of the court or otherwise secure the ends of justice, though this jurisdiction being of an exceptional nature, is required to be exercised in exceptional cases, is no longer open to controversy. The principles for exercise of this jurisdiction Under Section 561-A Cr. P. C. have been laid down by the Supreme Court in the decision reported in AIR 1964 SC 703, *State of Uttar Pradesh v. Mohd. Naim*, as follows:

'If there is one principle of cardinal importance in the administration of justice, it is this: The proper freedom and independence of judges and magistrates must be maintained and they must be allowed to perform their functions freely and

fearlessly without undue interference by anybody, even by this Court. At the same time, it is equally necessary that in expressing their opinions, judges and magistrates must be guided by considerations of justice, fair-play and restraint. It is not infrequent that sweeping generalisations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before Courts of law in cases to be decided by them, it is relevant to consider--

(a) whether the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself;

(b) whether there is evidence on record bearing on that conduct justifying the remarks; and

(c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert that conduct.

It has also been recognised that judicial pronouncements must be judicial in nature and should not normally depart from sobriety, moderation and reserve.'

7. The point for consideration whether in the light of the principles laid down above, the remarks, to which exception has been taken can be considered justified on the material and whether it is a fit case requiring exercise of the exceptional jurisdiction in ordering expunction of the same.

8. There is no controversy over the fact that petitioner Shri S. K. Ghosh was not examined as a witness in any of these cases, and it follows that he had no occasion or opportunity to defend himself or explain any material appearing against his conduct, even if it be assumed that any such material is to be found on record. It has also not been pointed out that it was necessary to criticise the conduct of the petitioner for the decision of the cases as his conduct was not directly or indirectly a question for consideration. The only other relevant point, therefore, is whether there is evidence on record bearing on the conduct of the petitioner which justifies the remarks in the different judgments.

9. It is necessary and relevant to recapitulate and bear in mind the sequence of events that preceded the point of time when the F. I. R. in G. R. Case No. 369/65 was lodged by Shri Pradhan, successor of Shri Singh Samant, on 3-8-65 when for the first time petitioner can be said to have come into the picture. From a perusal of the evidence of Shri Pradhan (P. W. 4) in the batch of cases (G. R. Cases Nos. 369, 421 and 422 of 1965), it is clear that though P. W. 4 commenced taking over charge on the 19th, the same could not be completed till 25th, as charge of some petrol and cash amounting to Rs. 401/- was not delivered till the later date. The evidence of P. W. 4 and the station diary entries also show that at about 10.10 a.m. on 25-6-65 he made a report over the phone to the Fire Officer at Cuttack as per Ex. 12 that Shri Singh Samant had not turned up to explain the shortage of cash and petrol till that time. P. W. 4 also sent a telegram (Ex. 39/5) intimating the shortage of petrol and cash while taking over charge from his predecessor.

It is only after receipt of further instructions from the Fire Officer that P. W. 4 accepted recoupment of petrol and cash which had been found short. In response to the direction of the Fire Officer during his visit to that office, P. W. 4 submitted a detailed report to him on 31-7-65 with regard to the shortage of petrol and cash and Ex. 10/2 is that report. A copy of this report was also sent by him to the D. I. G. The evidence of P. W. 21 is that on 2-8-65 being instructed by petitioner he proceeded to Khurda, recorded the F. I. R. (Ex. 16), took up investigation against the accused and ultimately G. R. Case No. 369/65 was started. In the course of investigation, the I. O. drew up other F. I. Rs. on his own information and the four other cases were started.

10. In the background of the sequence of events mentioned above, the next point for consideration is whether there is any. and if so, reasonably adequate material to necessitate or justify the remarks made by the learned Magistrate against the petitioner in the different judgments. For this purpose, it will be convenient to deal with the remarks in each of the five cases.

11. So far as G. R. Case No. 369/65 is concerned, the entire material on which the learned Magistrate seems to rely to justify his remarks is confined to certain statements made in his evidence by P. W. 4, the evidence of P. W. 21 and the

statement of accused Shri Singh Samant Under Section 342, Cr. P. C. In his statement Under Section 342 Cr. P. C., the accused purports to attribute a motive to the petitioner and the D. I. G. in transferring him from Cuttack some time earlier and subsequently foisting the false case through the I. O. (P. W. 21). The assertions and allegations made by the accused in his statement Under Section 342 Cr. P. C. can hardly be considered as evidence and utilised as material having a bearing on the conduct of petitioner. There is not an iota of proof in support of the allegations made by the accused in his statement Under Section 342 Cr. P. C. The statement of the accused Under Section 342, Cr. P. C. may be useful in considering the defence, but cannot be considered as material against another unless the facts stated therein are proved.

The next item refers to the testimony of P. W 4. He is the person who lodged the F. I. R. on 3-8-65 before P. W. 21 on which investigation was started and ultimately charge-sheet submitted.

(After discussing his evidence, his Lord-ship proceeded.)

Thus, the materials on which the learned Magistrate has relied to justify his remarks in this case do not, in the least, lead to the inference drawn. Therefore, the remark 'From these materials it is not difficult to come to an inference that the I. G. of Police is personally interested in roping the accused' is not even remotely justified by the evidence or other material on record nor was such a remark necessary or relevant for a decision of the case.

The second remark in the judgment of that case beginning with the words 'This itself shows' and ending with the words 'to please his boss' is one against the conduct of the I. O. and it does not purport or amount to a criticism of the conduct of the petitioner. The I. O. has not moved for expunging this portion of the remark. Therefore, the question of expunction or otherwise of the said portion does not arise.

12. With regard to the remarks in G.R. Nos. 421 and 422 of 1965, the material on record is the same which was available for making the remarks in G. R. Case No. 369 of 1965. There is, however, a further distinguishing feature between these two

cases and G. R. Case No. 3G9 of 1965. These two cases were initiated by the I. O. (P. W. 21) on two F. I. Rs. drawn on his own information claimed to have been obtained by him during the course of investigation into the G. R. Case No. 369 of 1965. Both these F. I. Rs. (Exs. 24 and 25) were drawn up on 31-8-65. There is no material on record nor is there any suggestion even that the I. G. who is the petitioner here had any knowledge of drawing up of these two F. I. Rs. by P. W. 21 much less is there any material to infer that they were drawn up either with his connivance or at his instigation.

At best, the only material to connect the petitioner with these two F. I. Rs. and starting of the two cases is the statement of the accused Under Section 342 Cr. P. C. where he has attributed certain motives to the I. G. and D. I, G. while getting him transferred from Cuttack on an earlier date. These remarks, therefore, appear to have been made either on certain assumptions of the learned Magistrate or impressions he might have obtained during the trial of G. R. Case No. 369 of 1965 or for other reasons which it is difficult to devise. There is absolutely no material to connect petitioner with the starting of these two cases, and as such, they are unjustified on the ground of absence of material as well as on the ground that the conduct of petitioner was not relevant or necessary for the enquiry. Hence, the remarks cannot be sustained and are liable to be expunged.

13. Coming to the remarks in G. R. Cases Nos. 467 and 516 of 1965, admittedly, these two cases were started on F. I. Rs. drawn up by the I. O. on 29-9-65 and 3-11-65 marked as Exs. 21 and 22 respectively.

(After discussing the documentary evidence, his Lordship proceeded.)

The learned Magistrate instead of confining his attention to the merits of the cases and the evidence before him so far necessary for deciding the cases has digressed from his duty by championing the cause of the Fire Officer as against his official superior, the I. G.; made some assumptions and tried to sit on judgment on the tone and language used by the I. G. in his communication of an order to his subordinate. In my opinion, there is absolutely no basis or justification for making these remarks, and if they indicate anything, they only show that the learned Magistrate has failed to observe reserve, sobriety and judicial approach in

deciding or determining the cases on their merits with reference to the material placed before him.

14. Though it is a principle of cardinal importance in the administration of justice that proper freedom and independence of Judges and Magistrates must be maintained and they must feel that they should act freely and fearlessly, a valuable privilege always recognised and zealously guarded, the learned Magistrate has failed to remember that it is all the more necessary that in expressing opinion and making remarks, judicial officers should be guided by considerations of justice, fair-play and restraint.

15. For the reasons discussed above, I come to the conclusion, a conclusion which justice demands, that these are exceptional cases where the inherent jurisdiction of the Court should be exercised and the remarks referred to in paragraph 5 (ii) of the application in CrI. Misc. Case No. 158 of 1967 and the remarks complained of in the other four criminal misc. cases be expunged from the respective judgments of the learned Magistrate in G. R. Cases Nos. 369, 421, 422, 467 and 516 of 1965. The criminal misc. cases are allowed accordingly.