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**Court :** Orissa

**Decided On :** Nov-29-1977

**Reported in :** 44(1977)CLT659; 1978CriLJ687

**Judge :** R.N. Misra, J.

**Appellant :** Ranjit Kumar Samantray and ors.

**Respondent :** State of Orissa

**Judgement :**

ORDER

**R.N. Misra, J.**

1. The seven petitioners are members of the second party in a proceeding Under Section 107 of the Cr IPC before the City Magistrate of Cuttack and Imve been called upon to show cause why there should not be an order requiring each of them to execute a bond for rupees one thousand for keeping peace for a period of one year. This application Under Sections 401 and 482 of the Cr IPC has been made for quashing the said proceeding on the ground that there is absolutely no material for the satisfaction of the City Magistrate that the petitioners be proceeded against Under Section 107 of the Code.

2. The learned Additional Government Advocate raised a preliminary objection that the impugned order is of interlocutory character and in view of the bar under Sub-

section (2) of Section 397 of the Code, the revision application is not maintainable Under Section 401. Mr. Patnaik for the petitioners has taken the stand that the application is essentially one Under Section 482 of the Code and mere mention of Section 401 may not be permitted to be relied upon for sustaining the preliminary objection. According to him, the application Under Section 482 of the Code is maintainable notwithstanding Section 397(2) of the Code if petitioners are able to satisfy this Court that there is absolutely no material for Initiating the proceeding against them.

3. It is appropriate that at this stage the facts are recapitulated. Petitioners are members of the Cuttack Mini Bus Owners' Association. They ply their buses on different routes from the bus stand at Badambadi in the outskirts of Cuttack Town. Members of the first party are owners of Contract Carriage Vehicles. Dispute arose between the parties over picking up of passengers for their respective vehicles. The local police sent a report to the learned City Magistrate recommending initiation of a proceeding Under Section 107 of the Cr.PC. Therein, it was alleged:

Today (10-7-77) 'at 9 A.M. A.S.I. A.C. Samantaray reported me that yesterday he had duty at Badambadi bus stand where he found Section 6 of second party (Babji Charan Behere) hawking for a vehicle before time and diverting the passengers of another Mini bus scheduled to leave the stand. When this was opposed by Section 3 of 1st party, the former abused the latter for which he was assaulted by the latter. Thereafter the latter also assaulted the former and over, this issue there was commotion. Since some of the owners intervened in the matter, the A.S.I. entered the fact in station diary vide station diary entry 323,

On perusal of station diary for 9-7-77, I found Section 1 of second party (Debendra Narayan Das) has reported vide station diary entry No. 313 that he was assaulted by Pagli, Talana and others.

I could come to know from a source that situation at Badambadi is tense due to ill-feeling between members and office-bearers of Mini Bus Owners' Association and Mini Bus Workers' Association.

The report thereafter narrated certain events which did not implicate any other person except Babaji Charan Behera, Copies of the station diary entries bearing Nos. 313 and 323 as also 335 were sent along with the report.

4. According to Mr. Patnatk, accepting all the allegations to be true, no case at all has been made out against the petitioners excepting Babaji Charan Behera. He, therefore, contends that the learned Magistrate has acted without basis in starting a proceeding against the remaining six petitioners and if the proceeding is made to continue they would be unnecessarily harassed. In the case of *Delhi Development Authority, New Delhi v. Smt. Lila D. Bhagat* : AIR 1975 SC495 , the learned Judges were considering the ambit and scope of Section 561-A of the old Cr IPC of 1898. In para 7 of the judgment, the Court observed: (at p. 437 of Cri LJ) In an appropriate case it may be, rather, is, permissible to protect a person from illegal and vexatious prosecution by grant of an appropriate writ or in exercise of the inherent or revisional powers of the High Court....

In the case of *Supdt. and Remembrancer of Legal Affairs, W. B. v. Mohan Singh* : 1975 CriLJ812 , the Court observed:(at p. 814 Cri LJ).Section 561-A preserves the inherent power of the High Court to make such orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must, therefore, exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked....

In the case of *State of Karnataka v. L. Muniswamy* : 1977 CriLJ1125 the Supreme Court referred to the contention before it by saying (at p. 1128 of Cri LJ) :

The second limb of Mr. Mookerjee's argument is that in any event the High Court could not take upon itself the task of assessing or appreciating the weight of material on the record in order to find whether any charges could be legitimately framed against the respondents. So long as there is some material on the record to connect the accused with the crime, says the learned Counsel, the case must go on and the High Court has no jurisdiction to put a precipitate or premature end to the proceedings on the belief that the prosecution is not likely to succeed. This, in our opinion, is too broad a proposition to accept....The High Court therefore is

entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case.....In the exercise of this wholesome power (Section 482), the High Court is entitled to quash a proceeding if 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 saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity (or making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.' Referring to some precedents, the Court observed that considerations justifying the exercise of inherent powers for securing the ends of justice naturally vary from case to case and a jurisdiction as wholesome as the one conferred by Section 482 ought not to be encased within the strait jacket of a rigid formula. In a latter part of the same judgment, the following was further observed (at p. 1129 of Cri LJ):...the order framing a charge affects a person's liberty substantially and therefore it is the duty of the Court to consider judicially whether the material warrants the framing of the charge. It cannot blindly accept the decision of the prosecution that the accused be asked to face a trial....

In the case of *Amar Nath v. State of Haryana* : 1977 CriLJ1891 the question that loomed large before the Court was as to the interpretation, scope, ambit and connotation of the words 'interlocutory order' appearing in Section 397(2) of the Code of 1973. Dealing with the bar Under Section 397(2) and the provision of Section 482 of the Code, it was observed (at p. 1893 of Cri LJ):.A harmonious construction of Sections 397 and 482 would lead to the irresistible conclusion that

where a particular order is expressly barred Under Section 397(2) and cannot be the subject of revision by the High Court, then to such a case the provisions of Section 482 would not apply. It is well settled that the inherent powers of the Court can ordinarily be exercised when there is no express provision on the subject-matter. Where there is an express provision, barring a particular remedy, the Court cannot resort to the exercise of inherent powers.' In a later part of the same judgment, the Court dealt with as to what would amount to an interlocutory order. In one of the latest decisions of the Supreme Court in the case of *Madhu Limaye v, State of Maharashtra*, (Criminal Appeal No. 259 of 1977, (sic) (81 of 1977) disposed of on 31-10-1977) (Reported in 1978 Cri LJ 165 (SC)) the Court observed (at p. 169): The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible referring to the decision of this Court in *R. P. Kapur v. State of Punjab* : [1960]1SCR388 . We think the law as stated above is not affected by Section 397(2) of the new Code. It still holds good in accordance with Section 482. (sic)

In *Madhu Limaye's* case, process was issued. An application was filed by the accused before the Sessions Judge to dismiss the petition of complaint on the ground that the court had no jurisdiction to entertain it. The Sessions Judge rejected the objections and proceeded to frame charge Under Section 500, IPC. The accused filed a revision petition before the High Court to challenge the order of the Sessions Judge. The High Court having refused to interfere, an appeal was taken before the Supreme Court and the question for consideration was whether the bar Under Section 397(2) of the Code stood in the way of the High Court entertaining revision. The Supreme Court ultimately allowed the appeal of the accused and remitted the matter to the High Court to enter into the merits.

5. Keeping the trend of judicial opinion in recent cases and the decisions referred to above in particular in view, I am inclined to agree with Mr. Patnaik for the petitioners that where there is absolutely no material for the initiation of a criminal proceeding against a person, the would be entitled to approach the j High Court

Under Section 482 of the Cr.PC for quashing of the proceeding and in | case he is able to satisfy the Court that ibis stand is correct, the Court would be entitled to quash the proceeding and thereby relieve the citizen of undue harassment. This in fact would be case I related to jurisdiction and the bar under |S. 397(2) of the Code is applicable to j cases where the Court has jurisdiction to i entertain a proceeding and in exercise of 'that jurisdiction it proceeds to make an [order, in a case where the order is with-in jurisdiction, if the order made by the court is interlocutory in nature, the bar I operates; otherwise the superior court has revisional jurisdiction.

6. As I have already stated, there is absolutely no material so far as the petitioners excepting Babaji Charan Behera (petitioner no. 4 herein) are concerned. In the circumstances, I think it appropriate to quash the proceeding so far as they are concerned. From the category of members of the second party, all the petitioners except Babaji Charan Behera shall stand deleted, The proceeding Under Section 107 of the Cr.PC shall now proceed subject to such orders as the learned Magistrate may pass against Babaji Charan Behera alone. The records be returned quickly.

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