

**M.S. Jaggi Vs. State**

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**Court :** Orissa

**Decided On :** Jan-27-1986

**Reported in :** 1986(I)OLR406

**Judge :** S.C. Mohapatra, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 199

**Appeal No. :** Criminal Revision No. 35 of 1986

**Appellant :** M.S. Jaggi

**Respondent :** State

**Advocate for Def. :** None

**Advocate for Pet/Ap. :** Party in person

**Disposition :** Petition dismissed

**Judgement :**

**S.C. Mohapatra, J.**

1. This is an application by the accused against the order of the learned Judicial Magistrate, First Class. Cuttack, dated 14.11.1985 passed in 2 (a) CC No. 23 of 1932 deciding to frame charge against him under Section 199 of the Indian Penal Code.

2. In this Court the accused himself presented his case and I have heard him at length on 16.1.1985, 21.1.1986, 24.1.1986 and today, keeping in mind that having the normal emotions of an accused to get rid of the blame put on him, he is likely to feel aggrieved in case sufficient opportunity is not given to him to exhaust all his submissions.

3. Section 199, Indian Penal Code reads as follows :

'199. Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used shall be punished in the same manner as if he gave false evidence'.

A bare reading of the section would show that for a conviction under the said section the following ingredients are to be satisfied :

- (a) the accused made or subscribed the declaration in question;
- (b) such declaration was received by a Court of Justice as evidence of a fact;
- (c) in the declaration made he made a statement;
- (d) such statement was false;
- (e) the statement made was on a material point; and
- (f) the accused knew when making such a declaration that it was false.

4. The prosecution in this case was initiated by a complaint lodged by the Registrar of this Court. On 16. 11. 1981, the petitioner filed an affidavit in Criminal Revision No. 432 of 1979 wherein he made the following statement :

'5. That the opposite party has come to know from reliable sources that this Hon'ble Court and the Hon'ble Justice J.K. Mohanty and Hon'ble Chief Justice R.N. Mishra, and the counsel appearing for the petitioner, B.B. Mohanty were

class-mates and in view of the affidavits and petitions filed by the opposite party most humbly and respectfully submits that Your Lordship in the interest of justice should not hear the matter of this party.'

Lastly, it was stated :

'That the facts stated above are true to my knowledge.'

This affidavit was filed at a time when Hon'ble Dr. Justice B.N. Misra was hearing the Criminal Revision. On 17.11.1981, hearing of the Criminal Revision was concluded on the affidavit of the petitioner and the judgment was reserved to be delivered. On 15-12-1981 by order No. 46 direction was given to the Registrar to lodge the proper complaint in accordance with law before the Chief Judicial Magistrate, Cuttack. In this background, the complaint was filed by the Registrar.

5. Evidence of P. W. 1 was recorded, the affidavit dated 16.11.1981 was marked at Ext. 1 and the order-sheet containing order No. 46 dated 15-12-1981 in Cri. Revision No. 432 of 1979 has also been marked as Ext. 2. Three other affidavits dated 20-10-1981 and 17-11-1981 were marked as Exts. A, B and C Considering these documents the learned Magistrate decided to frame the charge.

6. The petitioner very fairly submitted that at this stage of the case, it may be assumed that the first three ingredients are prima facie satisfied. He, however, very strongly submitted that the materials on record do not justify a prima facie satisfaction of the last three ingredients.

7. There is no doubt that the affidavit was made for the purpose of bringing to the notice of the Hon'ble Judge that he should not hear the matter. Therefore, the statement alleged to be an offence was on a material point. It is to be seen whether the statement was false to the knowledge of the accused which would cover the rest two ingredients.

8. While considering the question of framing a charge, the evidentiary value of the materials are not to be assessed. Reading the materials, as they are, one is to find out whether the falsity of the statement in the affidavit-within the knowledge of the accused can be spelt out Once in the affidavit in Ext. 1, it is stated that the facts

are true to the knowledge of the deponent, the basis of the knowledge being reliable source, reliability of the source is to be found out. Until the source is not disclosed, the question remains unanswered. The answer will depend upon the materials obtained in the trial. Facts recorded in Ext. 2 create suspicion about the source to be reliable. It cannot be said at this stage that on perusal of Exts. 1 and 2 a prima facie case is not made out. What would be the evidentiary value of the affidavits marked as Exts. A, B and C would come within the arena of trial.

9. The petitioner has brought to my notice several other documents which were not before the trial Court. Since those are not on the record, I am not dealing with the same lest any observation made in respect of those documents might prejudice the accused in the trial. Decisions both having persuasive and binding effect of the Supreme Court this Court, Patna High Court and Allahabad High Court have been cited before me in course of submission. Explaining of such decisions would be academic and in course of explaining the same I shall have to deal with facts. Those decisions which would be material will be certainly taken into consideration by the trial Court.

10. It need not be emphasised that complaint by this Court is no of any greater value than by any other person No higher weight is to be given to it while trying the charge against the accused. The criminal jurisprudence that several accused may be acquitted but one innocent person shall not be convicted, shall not be forgotten by the trial Court while trying the accused. This observation is made by me to clarify the apprehension in the mind of the accused that the complaint by this Court is likely to influence the mind of a Magistrate, who is subordinate to this Court. I am sure, a member of the judiciary even in the lowest ladder has not forgotten that his actions are to be made honestly and fearlessly. He is to prove not only his own independence but also the independence of the judiciary.

11. True it is, I am rejecting the prayer of the accused for discharging him from the complaint. Yet I make it clear that no observation in the impugned order or in this order shall influence the trying Magistrate in any manner and keeping up the tradition of the judicial system in this country the trial Court shall honestly and fearlessly deal with the matter.

12. In conclusion, I am not satisfied that this is a fit case for admission which is accordingly dismissed. Send back the records to the trial Court immediately.

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