

Bamadev Misra Vs. D.C. Das

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Court : Orissa

Decided On : Nov-10-1972

Reported in : 1973CriLJ1064

Judge : R.N. Misra, J.

Appellant : Bamadev Misra

Respondent : D.C. Das

Judgement :

ORDER

R.N. Misra, J.

1. The petitioner, an Advocate of the Puri Bar, seeks to quash a complaint laid against him by a trying Magistrate before the Sub-divisional Magistrate of Puri for his prosecution under Section 228,. Indian Penal Code read with Section 482,. Criminal Procedure Code. The facts necessary for appreciating the point raised by Mr. Sahu on his behalf before me may thus be stated. G. R. Case No. 1446 of 1969 was being tried in the Court of Sri D. C. Das,, Magistrate, First Class (Judicial) at Puri.. The petitioner was the advocate for the accused and the prosecution was being handled by the Court Sub-Inspector one Mr. Akshay Kumar Patnaik. On 7-6-1971, at the close of the day when the cross-examination of a prosecution witness was going on, the Court Sub-Inspector suddenly stood up and interrupted the cross-examination because he could not follow a question put

to the witness and disturbed the petitioner by drawing the attention of the Court that the petitioner was not entitled to put such a question. Thereupon the petitioner stated to the Court Sub-Inspector that he was not obviously hearing the cross-examination and; suggested that he would put some oil into his ear. In the petition before me it has been stated that the statement was made more out of joke than indignation and it was certainly not addressed to the Court. It was-an aside meant for the prosecuting Sub-Inspector. Without realising in what spirit the petitioner had made the statement the Court Sub-Inspector flared up and retorted back to the petitioner saying that it was nonsense-and that he was a bastard. The petitioner was not prepared to receive such a retort: because he could never realise that the Court Sub-Inspector in the presence of a Magistrate-sitting as a court could retort with such words.

The petitioner states that he was shocked to find the indifference of the Magistrate and when placed in such a disgusting situation he threw his spectacles on the table which by accident struck somewhere near the eye-brow of the Court Sub-Inspector who was sitting close to him as the prosecutor's counsel. The Magistrate directed the petitioner to leave the court room. Accordingly the petitioner went out. A little later that evening the Court Sub-Inspector lodged' F. I. R. at the police station. The petitioner-on the next day complained in the Court against the Court Sub-Inspector alleging commission of offences punishable under Sections 500 and 504, Indian Penal Code. On the next day, that is, 8-6-1971 the Magistrate sent for the petitioner through his-Bench Clerk, drew up a formal proceeding for contempt of Court under Section 228, Indian Penal Code and took down a statement from the petitioner and directed him thereafter to appear before the Sub-Divisional Magistrate. To ensure the appearance of the petitioner a personal recognition bond was taken from him. It is at this stage that the petitioner came before this Court to quash the proceeding initiated by the trying Magistrate. The order-sheet of the proceeding of 7-6-1971 in the G. R. Case has been filed before me as also the order-sheet of 8-6-1971 to bear out the allegations made in the petition. The order dated 10-6-1971 made by the Sub-Divisional Magistrate of Puri shows that he has taken cognizance of an offence under Section 228, Indian Penal Code against the petitioner.

2. Mr. Sahu contends that the learned Magistrate was, somewhat touchy and in case he thought that what happened on 7-6-1971 was contemptuous and he was meant to be affected by the remarks of the petitioner, action should have been taken then and there to meet the situation. Obviously the learned Magistrate never thought that the remarks of the petitioner were meant for the Magistrate. In the setting the remarks were made they must necessarily have been addressed to the Court Sub-Inspector.

3. Mr. Sahu submits relying on a decision of the Lahore High Court in AIR 1943 Lah 14 : 44 Cri LJ 181, (Hakumat Rai v. Emperor), that where the remark is not addressed to a court even if it is rude or vulgar it cannot be made the subject-matter of an offence under Section 228, Indian Penal Code though the court over-hears it. As I have already said, the remark which has been made the basis of the proceeding now was not meant for the court and obviously it has been over-heard by the Magistrate. Taking into account the smallness of the court rooms and the manner in which the counsel and court sit ordinarily in the Magistrate's Courts even if a statement is meant for the person sitting next to the maker of the statement over-hearing is quite possible. Therefore, the learned Magistrate must have certainly heard the statement made by the petitioner which was meant for the Court Sub-Inspector. I find both the sides are to blame if the allegations are true. By my saying so either party would not be affected because I do not make any observation to bind the litigation. But as I find both sides had set the law in motion and two cases are pending trial. In the circumstances the majesty of law having not been affected at all the Court need not come into the picture and both the parties should be left to fight out their own cases so that if any of them is found to have committed any offence he may be adequately dealt with. I think it appropriate that the prosecution launched at the instance of the Court should not be permitted to continue because it is not necessary in the interests of justice at all. I would accordingly accept the revision petition and quash the proceeding initiated on the basis of the complaint made by the trying Magistrate. The order dated 10-6-1971 made by the learned Sub-Divisional Magistrate of Puri taking cognizance of the offence under Section 228, Indian Penal Code against the petitioner is accordingly quashed.

