

Subhasini Jena Vs. Commandant of 6th Battalion, O.S.A.P.

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Court : Orissa

Decided On : Feb-04-1988

Reported in : 1988CriLJ1570

Judge : K.P. Mohapatra, J.

Appellant : Subhasini Jena

Respondent : Commandant of 6th Battalion, O.S.A.P.

Judgement :

ORDER

K.P. Mohapatra, J.

1. In a petition dated 17-12-1985 purported to be under Section 91 of the Code of Criminal Procedure ('Code' for short) the petitioner called for production of documents from the Commandant of the 6th Battalion, Orissa Special Armed Police, Cuttack ('O.S.A.P.' for short). The State Government claimed privilege under the provision of Section 123 of the Indian Evidence Act (hereinafter referred to as the 'Act'). The learned Judicial Magistrate, Paradeep at Kujang, by the impugned order granted privilege. Against this order the criminal revision has been filed.

2. A short genesis of the case is necessary for appreciation of facts and the point of law involved. On 19-3-1984 a very unfortunate incident took place at Paradeep

in course of which some police officers and labourers were killed and a large number of huts situate at a place called 'Iron Plot' where labourers used to live with members of their family were burnt to ashes. The petitioner, a woman labourer, filed a complaint petition on 27-9-1984 in the Court of the learned Judicial Magistrate making allegations against unnamed armed-constables of O.S.A.P. who were on duty at Paradeep on the date of incident for having committed offence under Section 120B and 436/341.P.C. on the allegations that they committed arson by setting fire to the huts of the labourers resulting in loss of property. The learned Judicial Magistrate directed enquiry under Section 202 of the Code and examined some witnesses including an Assistant Commandant of the 6th Battalion of O.S.A.P., Cuttack. During pendency of the enquiry, the petition was filed to call for documents in order to ascertain two facts, namely, the names of the constables of the 6th Battalion of O.S.A.P. who were deputed to Paradeep on 19-3-1984, records of the number of guns and quantity of ammunition they carried and the quantity of ammunition, they returned back at headquarters. At the first instance, the learned Judicial Magistrate passed an order on 6-1-1986 directing issuance of summons to the Commandant of the 6th Battalion of O.S.A.P., Cuttack to produce the relevant records. The said police officer claimed privilege for production of documents. By order dated 24-4-1986 the learned Judicial Magistrate considered the matter and held that the officer could not claim privilege under the provisions of Section 123 of the Act and so he directed him to produce the documents. In view of the aforesaid order, the Secretary of the Home Department of the State Government being the administrative head of the police department swore an affidavit claiming privilege under the provisions of Section 123 of the Act. It was stated in the affidavit that the records called for are unpublished official records relating to the affairs of the State and disclosure thereof will cause injury to public interest. Records in connection with mobilisation of armed forces and disclosure of the names of the personnel will impair the functioning of the public services. Documents with regard to movement or deployment of armed forces and disclosure of the names of the personnel will impair the functioning of the public services. Documents with regard to movement or deployment of armed forces are confidential in nature and disclosure thereof is likely to demoralise them, as a consequence of which they may feel insecure for

performance of their legitimate duties. Accordingly, he considered that disclosure of documents will lead to injury and will hamper execution of public policy and functioning of the public services. Filing of the affidavit led to a fresh spurt of arguments culminating in the impugned order dated 15-7-1987, in which the learned Judicial Magistrate took the view that, (i) the documents called for are unpublished official records; (ii) they relate to movement and deployment of armed forces relating to the affairs of the State; (iii) disclosure of the documents shall have the effect of demoralising the armed forces who may feel insecured in which case it will affect the public interest adversely; and (iv) even if the documents are disclosed, they cannot be utilised by the petitioner for picking out the persons accused of setting fire to the houses in view of the categorical admission of the eye-witnesses examined in the injury under Section 202 of the Code to the effect that they could not identify the culprits. Accordingly, he upheld the claim of privilege under the provisions of Section 123 of the Act.

3. Mr. N.K. Das, learned Counsel appearing for the petitioner, urged that he wanted disclosure of the names of the police personnel who were deployed at Paradeep on 19-3-1984 in order to implead them as the accused persons, because some of the eyewitnesses to the occurrence had stated that the armed police of O.S.A.P. committed arson by setting fire to the houses of the labourers at the 'Iron Plot'. According to him, the documents called for do not relate to the affairs of the State although they are unpublished official records and so there could be no objection for disclosing the same in the court to secure the ends of justice. Mr. Jairaj Behera, learned Additional Standing Counsel, on the other hand contended that the documents relate to the affairs of the State and their disclosure shall be against public interest. That apart, the documents were not relevant and even if produced they cannot be usefully utilised by the petitioner for proof of her case against an unidentified group of armed forces of the D.S. A.P. On the face of lack of identification of the real culprits, grave injustice would be caused to the armed forces of the O.S.A.P., if en bloc they are arrayed as accused in the case. [Therefore, the documents being privileged, the impugned order cannot be assailed

4. Under Section 91 of the Code, whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under the Code by or before such court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order. Thus, in order to make the provisions of Section 91 applicable, the document or thing must be considered to be necessary or desirable, which must be judicially determined by the Magistrate. He cannot call for anything and 'everything from anybody and everybody. The document or thing called for must have some relation to or connection with the subject matter of the investigation, inquiry or trial and throw some light on the proceeding or some link in the chain of evidence. When the relevancy of the documents asked for does not speak for itself, the Magistrate is not bound to call for the production of the same, in plain words, the documents called for, must have some sort of relevancy with the matter under investigation, inquiry or trial As has been stated by the witnesses in the inquiry under Section 202 of the Code, armed forces of the O.S.A.P. were deployed at Paradeep on 19-3-1984, but, although some general statements have been made that they were responsible for the arson particular individuals were not pin-pointed as the real culprits. Therefore, even if documents containing the list of names of the armed forces deployed are produced in Court, it will not serve any useful purpose because, none of the forces can possibly be made accused for having committed arson and an accusing finger cannot be pointed out to any one. Therefore, if such a list is produced in Court and all the armed forces of the 6th Battalion of the O.S.A.P. are impleaded as accused persons in the complaint petition, there would be a grave miscarriage of justice. Further, particulars as to ammunition brought and returned by the armed forces seem entirely irrelevant in the absence of any allegation in the complaint petition that guns were fired and persons were hit and injured by bullets. Therefore, in consideration of the provisions of Section 91 of the Code and the facts prima facie disclosed by the case, I am of the opinion that the documents called for are neither necessary nor desirable for the purpose of the enquiry under Section 202 of the Code. The

petition is misconceived.

5. All the documents relating to deployment of armed forces are unpublished official records and, in the very nature of things, are confidential and secret papers. Except officers dealing with law and order, none has naturally access to such documents. Whenever, it is found necessary by the State to maintain law and order in a particular locality, the armed forces can be deployed at the discretion of the authorities responsible for maintenance of law and order. Therefore, it can be said with no fear of contradiction that all such papers relate to the affairs of the State. The learned Judicial Magistrate, therefore, took a correct view in this respect.

6. With regard to the interpretation of Section 123 of the Act, I would only refer to a recent decision reported in : AIR1986 Ori199 , M/s. Ferro Alloys Corpn. Ltd. v. Industrial Development Corpn. of Orissa Ltd., in which all the important decisions of the Supreme Court on this subject including the case of S.P. Gupta reported in : [1982]2SCR365 , which is commonly known as the 'Judges' case', have been followed. The sum and substance of the legal principle that emerged after decision was rendered in the 'Judges' case was that with regard to claim of privilege of documents which is based on public policy as being detrimental to public interest or service, the interest of the State will always prevail over in interest of the individual. In order to serve the interest of an individual, in this case the petitioner, unpublished official records relating to the affairs of the State which by their very nature are confidential and secret, cannot be permitted to be produced in Court to be exposed to the public view. Therefore, the claim of privilege upheld by the learned Judicial Magistrate cannot be assailed.

7. I understand the predicament of Mr. Das in the identification of the culprits, but in my view law as has been interpreted does not support him in this respect. He must have to find out other ways and means for identification of the culprits in the inquiry under Section 202 of the Code. Before departing from the case, I must make it clear that none of the observations made shall prejudice the learned Judicial Magistrate in any manner in the inquiry under Section 202 of the Code and he shall be free to form his own opinion on the materials available to him in

this respect.

8. For the foregoing reasons, I do not find sufficient grounds to interfere with the impugned order and accordingly reject the criminal revision.

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