

Harekrishna Sahu Vs. State of Orissa

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Court : Orissa

Decided On : Sep-27-1985

Reported in : 60(1985)CLT485; 1985(II)OLR603

Judge : B.K. Behera, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 190(1) and 460

Appeal No. : Criminal Revision No. 409 of 1981

Appellant : Harekrishna Sahu

Respondent : State of Orissa

Advocate for Def. : D.P. Sahoo, Standing Counsel

Advocate for Pet/Ap. : G. Bohidar, G.N. Mohapatra and U.C. Mohanty

Disposition : Petition allowed

Judgement :

B.K. Behera, J.

1. If I hold, as I must, that the complainant cannot be the Judge of his own case, the order of conviction, recorded against the petitioner under Section. 193 of the Indian Penal Code sentencing him to undergo rigorous imprisonment for a period of four months and to pay a fine of Rs. Rs. 100/- and in default of payment thereof,

to undergo rigorous imprisonment for a further period of one month, affirmed by the appellate Court, must be set at naught. I do not feel myself called upon to go into the merits of the case as the entire proceedings against the petitioner had been vitiated by an illegal order taking cognisance passed by the same Magistrate who had made the complaint. The ground urged on behalf of the petitioner in this regard is unassailable and has fairly been acceded to by the learned Standing Counsel.

2. For making two irreconcilable statements in two judicial proceedings, admitting one thing in the former case and denying it in the other, before the Judicial Magistrate, First Class, Baramba, a complaint was made as required under Section. 195 of the Code of Criminal Procedure ('the Code', for short) by Mr. M. P. Mishra, then functioning as the Judicial Magistrate. First Class Baramba, 'IN THE COURT OF THE JUDL. MAGISTRATE FIRST. CLASS, BARAMBA' of which he was himself the Presiding Officer, On the basis of the complaint made by him, the same Judicial Magistrate took cognisance of the offence, evidently under Section. 190(1)(c) of the Code, The complainant:, whoever he any be, cannot be a Judge of his own case in such a matter. The learned Judicial Magistrate went legally wrong in taking cognisance on the basis of his own complaint. It was open to him to make the complaint before the Chief Jndicial Magistrate, Cuttack, or before the Subdivisional Judicial Magistrate, Athgarh. Baramba comes within the area of the Sub-division of Athgarh in the district of Cutack. The learned Judicial Magistrate did not take recourse to this and took cognisance himself, as indicated above, which could not legally be done. In this connection, reference may be made to the decisions reported in 1982 Cuttack Law Reports (Criminal) 146 (Gopinath Pradhan and Ors. v. State of Orissa) and AIR 1952 Assam 68 (Ramaswarnp Agarwalla v. State.)

2. As provided in Section. 460 of the Code, if an irregularity is committed by a Magistrate not empowered by law by taking cognisance of an offence under Clause (a) or Clause (b) of Sub- Section (1) of Section. 190 of the Code, this irregularity does not vitiate the proceedings. It has been provided in Section. 461 of the Code that if a Magistrate, not being empowered by law in that behalf, takes cognisance of an offence under Clause (c) of Sub- Section. (1) of Section 190 of

the Code, this irregularity vitiates the proceedings, For the aforesaid reasons, the contention raised on behalf of the petitioner that the entire criminal proceedings against the petitioner were invalid must be upheld.

4 The complaint had been made as far back as on May 30 1978 whereafter the trial proceeded and was concluded in March, 1980. The appeal preferred by the petitioner in the Court of Session in April, 1980 was disposed of in August, 1981. Thereafter this application in revision has been made in this Court in September, 1981 which is being disposed of today. In view of these facts and circumstances and as the petitioner has undergone a long trial whereafter he has moved the Court of Session in its appellate jurisdiction and this Court in its revisional jurisdiction for a long period, it would not be just, reasonable and proper, in my view, to direct a retrial of the petitioner after valid cognisance is taken.

5. I would allow the revision and set aside the impugned order of conviction and sentences passed against the petitioner.

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