

Maheswar Panda and anr. Vs. State of Orissa and anr.

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Court : Orissa

Decided On : Oct-28-2002

Reported in : 94(2002)CLT703

Judge : P.K. Tripathy, J.

Acts : Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3

Appeal No. : Criminal Misc. Case No. 5238 of 1998

Appellant : Maheswar Panda and anr.

Respondent : State of Orissa and anr.

Advocate for Def. : A.K. Rao and ;S.K. Rath

Advocate for Pet/Ap. : D.P. Dhal,; K. Rath, ;S.K. Tripathy,; P. Uttarkabaty and ;M.K. Dash

Disposition : Case allowed

Judgement :

P.K. Tripathy, J.

1. Though this case under Section 482, Cr. P.C. has been heard along with a batch of cases involving the offences under Section 3 of the Scheduled Castes

and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act') but keeping in view the distinguishable facts involved in this case the Criminal Misc. case is disposed of by this separate Judgment.

2. The two petitioners are accused nos. 8 and 9 in G.R. Case No. 132 of 1997 of the Court of Special Judge, Cuttack involving the offences under Sections 458, 342, 354, 380, 506/36 I.P.C. and Section 3 of the Act as per the impugned order of cognizance dated 20.8.1998. That G.R. case is pending in the court of Sessions Judge-cum-special Judge, Cuttack. As per the impugned order, upon receipt of the charge-sheet submitted by the Officer-in-charge, Baramba Police-station, learned Special Judge took cognizance of the aforesaid offences both under the Indian Penal Code and the Act. That order is challenged on the ground of falsity in allegations due to political rivalry, non-availability of prima facie case for the offences punishable under Sections 354, and 506 I.P.C. and Section 3 of the Act and illegality in investigation having been done in breach of Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (in short 'Rules'). The State of Orissa i.e., the prosecution is opposite party No. 1 whereas the informant is the opposite party No. 2.

3. Since the application under Section 482, Cr.P.C is liable to be disposed of on legal issue, this Court does not propose to go into the facts involved in the case. It be noted here that Sri Abani Kumar Misra, Under Secretary to Government of Orissa, Home Department, Bhubaneswar, on 25.11.1999 filed an affidavit stating therein that because of dearth of Deputy Superintendents of Police (in short 'D.S.P.') and because of heavy pressure of work on the available D.S.Ps in the State, in a review meeting held on 4.9.1999 under the Chairmanship of the Principal Secretary to State of Orissa, Home Department, it was decided that the cases under the Act should be investigated by Sub-Inspectors/Inspectors of Police and charge-sheets should be submitted by D.S.Ps. At the stage of hearing of this application along with batch of cases, on 21.3.2001, another affidavit was filed by Sri Dwijabar Dalai, Under Secretary to Government of Orissa, Home Department, stating therein that the State Government regrets about the stand taken by the State Government in the above noted affidavit dated 25.11.1999. It is also stated; therein that in due obedience and compliance to the provision of law, the State

Government has issued an order vide letter No. 55674 dated 23.9.2000 directing the Director-cum-Inspector General of Police, H.R.P.C. Orissa, Cuttack that D.S.Ps in the State shall conduct investigations. A copy of that letter has been appended to that affidavit.

4. It is not disputed at the bar that in the case of Gangula Ashok and Anr. v. State of A.P. (2000) 18 OCR (SC) 364, the Apex Court, has propounded in paragraph 16 of the said judgment that:

'16. Hence we have no doubt that a Special Court under this Act is essentially a Court of Session and it can take cognizance of the offence when the case is committed to it by the Magistrate in accordance with the provisions of the Code. In other words, a complaint or a charge-sheet cannot straightaway be laid before the Special Court under the Act.'

5. In view of that authoritative decision of the Apex Court, the impugned order of cognizance by the Special Judge without an order of commitment by the concerned Magistrate is not sustainable in the eye of law. Therefore, on that score alone, the order of cognizance impugned in this application under Section 482, Cr.P.C. is liable to be quashed.

6. Since the petitioners have also challenged maintainability of the charge-sheet on the ground that investigation was done by an officer below the rank of D.S.P., therefore, learned counsel for the petitioners also prayed that the entire criminal proceeding is liable to be quashed. Learned Standing Counsel, however, did not concede to the said submission and argued that the purpose of the Special Act should not be defeated because of some procedural lacuna and for that matter a competent D.S.P. may be directed to investigate afresh. He alternatively argued that if for the reason of non-investigation by a competent Police Officer the charge-sheet is not going to be accepted for the offence under Section 3 of the Act, that does not lead to the consequence of quashing of the entire criminal proceeding because the other offences alleged and final form submitted relate to offences punishable under the Indian Penal Code and there is no law to prevent competency of the Officer-in-charge/Sub Inspector of Badamba Police-station to investigate into the case with respect to the offences under Penal Code.

7. Not only in this case but also in other cases, out of the batch of cases, while advancing argument on this score, reliance was placed in the cases of Delhi Administration v. Ram Singh, AIR 1962 S.C. 63, Nilratan Sircar v. Lakshmi Narayan Ram Niwas, AIR 1965 S.C. 1, Mahesh v. Union of India and Ors. (Allahabad High Court, (Lucknow Bench) 1988 (I) Crimes 926, Shanti Lal v. State of Rajasthan, 1989 (1) Crimes, 276, Sk. Sakaout and Ors. v. State of Orissa (1991) 4 OCR 610, State of Varyana and Ors., v. Ch. Bhajan Lal and Ors., AIR 1992 S.C. 604, A. Sasikumar v. The Superintendent of Police, Villupuram and 3 Ors., 1998 (3) Crimes 279, D. Ramalinga Reddy @ D. Babu v. State of A.P. 1999 (2) Crimes 343, Jhula Behera alias Dalai and Anr.v. State of Orissa (2000) 18 OCR 275, Umesh Ch. Mansingh and Ors. v. State of Orissa, (2001) 20 OCR 520, Roy V.D., v. State of Kerala, AIR 2001 S.C. 137, and in Re: Sessions Judge-cum-Special Judge, Cuttack v. State of Orissa (2002) 22 OCR-92.

8. In Delhi Administration (supra) involving offence under suppression of Immoral Traffic in Women and Girls Act (1956), the charge-sheet was quashed because of non-investigation of the cases by Special Police Officer as per the requirement of that law. In the case of Nilratan Sircar (supra) involving the offence under Foreign Exchange Regulation Act (1947), it was held by the Apex Court that Section 5(2), Cr.P.C., does not entitle an officer to investigate unless he is empowered or authorised under that Statute. In the case of Mahesh (supra), a Division Bench of the Allahabad High Court (Lucknow Bench), in the case of Shanti Lai (supra), the Rajasthan High Court, in the case of Sk. Sakaout (supra) this Court and in the case of Roy V.D. (supra) the Apex Court, held the investigations made by non-empowered officers under the N.D.P.S. Act as illegal to quash the charge-sheets. In the case of State of Haryana (supra) a non-designated Police Officer investigated into the case of corruption against Ch. Bhajanlal on the direction of Superintendent of Police. In that context, the Apex Court noted that :

'137. From the above discussion, we hold that (1) as the salutary legal requirement of disclosing the reasons for according the permission is not complied with; (2) as the prosecution is not satisfactorily explaining the circumstances which impelled the S.P. to pass the order directing the SHO to investigate the case; (3) as the said direction manifestly seems to have been granted mechanically and in a very

casual manner, regardless of the principles of law enunciated by this Court, probably due to blissful ignorance of the legal mandate, and (4) as, above all, the SHO has got neither any order from the Magistrate to investigate the offences under Sections 161 and 165, IPC nor any order from the S.P. for investigation of the offence under Section 5(1)(e) of the prevention of Corruption Act in the manner known to law, we have no other option, save to quash that order of direction, regarding 'investigate' which direction suffers from legal infirmity and also the investigation, if any, so far carried out. Nevertheless, our order of quashing the direction of the S.P. and the investigation thereupon will not in any way deter the first appellant, the State of Haryana to pursue the matter and direct an investigation afresh in pursuance of the F.I.R., the quashing of which we have set aside, if the State so desires, through a competent police officer, clothed with the legal authority in strict compliance with Section 5A(1) of the Act.'

In the case of A. Sasikumar (supra) the Madras High Court found the final report submitted by the Inspector of Police, (the Investigating Officer) was legally not tenable because of the involvement of the offence under Section 3 of the Act and in view of the provision in Rule 7 of the Rules, and accordingly directed for investigation by competent Police Officer, in the case of D. Ramalinga Reddy (supra) conviction under Section 3 of the Act was set aside because of non-investigation of the case by a competent Police Officer in accordance with Rule 7 of the Rules.

In the case of Jhula Behera (supra) after referring to Rule 7 and Section 9 of the Act, this Court held that:

'So by virtue of the above enabling power it is the duty and the responsibility of the State Government to issue notification conferring power of investigation of the cases by notified Police Officer not below the rank of Deputy Superintendent of Police, for different areas in the police districts. Learned Addl. Standing Counsel is unable to state whether such notification has been issued by the State Govt. but fairly concedes that investigation should be done by a Police Officer not below the rank of Deputy Superintendent of Police.

(from para 12 at pages 280-281).

It was further held in that context that:

'Rule 7 of the Rules having provided the rank of an Investigating Officer to be not below the rank of the Deputy Superintendent of Police, an officer below that rank cannot act as Investigating Officer. The above quoted Sub-section (2) of Section 156 cannot grant protection to an investigation done by an officer not provided in Rule 7 of the Rules or any other provisions in the Act and the Rule because such protection is available for investigation done by an officer not empowered or authorized under Sub-section (1) or (3) of Section 156 but not relating to an investigation as per the provisions in the 'Act and/or Rule.'

(from para 13, at page 282).

In that case since the investigation was still pending xxx a direction was issued to the Superintendent of Police to entrust the investigation to a competent Police Officer in accordance with law.

In the case of Umesh (supra) also this Court directed that investigation should be done by an officer not below the rank of Deputy Superintendent of Police.

In the case In Re: Sessions Judge-cum-Special Judge, Cuttack (supra) taking note of the provisions in Rule 7 of the Rules, Section 9 of the Act and Section 4 Cr.P.C., besides the object of the Act, this Court observed that:

'Hence, on a conjoint reading of the provisions of Section 20 and Section 23 of the Act, the irresistible conclusion that can be drawn is that the investigation can only be done by a police officer not below the rank of a Deputy Superintendent of Police and that the Deputy Superintendent of Police shall be appointed by the State Government/Director-General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it and before appointing such persons, in my view, the authorities must record their satisfaction on the aforesaid aspects.

Therefore, any investigation made by a Police Officer below the rank of the officer so provided in the statute is vitiated. Consequently, a criminal proceeding would be vitiated because of non-compliance with the statutory provision, as has

happened in the instant case.'

(from paragraph 5 at page 99)

9. The provision in Section 9 of the Act, Rule 7 of the Rules, Section 4 of the Cr.P.C. and the aforesaid ratio leads the situation to irresistible conclusion that an investigation to an offence under Section 3 of the Act by an officer not appointed in terms of the said provision of law is illegal and invalid. But when the offence complained are both under the Indian Penal Code and any of the offences enumerated in Section 3 of the Act, then the investigation which is being made by a competent Police Officer in accordance with the provision in Cr.P.C. cannot be and should not be quashed for non-investigation of the offence under Section 3 of the Act by a competent Police Officer. In such a situation the Criminal Proceeding shall proceed in appropriate Court for the offences punishable under the Indian Penal Code notwithstanding investigation and the charge-sheet being not liable to be accepted only with respect to the offence under Section 3 of the Act for taking cognizance of that offence.

10. Taking that view in the matter, so far the present case is concerned, this Court finds that the order of cognizance taken by the Sessions Judge-cum-Special Judge, Cuttack being contrary to the law propounded by Apex Court in the case of Gangula (supra), therefore, the order of cognizance dated 20.8.1999 stands quashed. It will be appropriate for the learned Special Judge to remit the G.R. case to the Court of concerned Magistrate who shall deal with the case for cognizance of otherwise but in accordance with law. If the prosecution shall move for investigation into the case by a competent Police Officer because of involvement of the offence under Section 3 of the Act, such application be duly considered by learned cognizance taking Magistrate if the prosecution will take prompt steps in that respect within a period of six weeks.

11. The CrI. Misc. Case is accordingly allowed.