

**Y. Phanikumar Vs. State of Orissa**

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**SooperKanoon Citation :** [sooperkanoon.com/535278](http://sooperkanoon.com/535278)

**Court :** Orissa

**Decided On :** Jul-22-2002

**Reported in :** 94(2002)CLT806

**Judge :** P.K. Tripathy, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397, 397(3) and 482

**Appeal No. :** Crl. Misc. Case No. 4998 of 2002

**Appellant :** Y. Phanikumar

**Respondent :** State of Orissa

**Advocate for Def. :** Y.S.R. Murti, Adv.

**Advocate for Pet/Ap. :** C.A. Rao

**Disposition :** Application dismissed

**Judgement :**

**P.K. Tripathy, J.**

1. Heard.

2. In this Application under Section 482, Cr.P.C. petitioner challenges the order of cognizance in G. R. Case No. 1033 of 1994 of the Court of S.D.J.M., Berhampur,

which was refused to be interfered with by learned First Addl. Sessions Judge, Berhampur on an application by the present petitioner, registered as Criminal Revision No. 59/51 of 1995-97.

3. The allegation, as averred in the FIR, is relating to a robbery committed on the informant by two persons, out of whom one was apprehended and is now facing the trial and the other, as alleged, is the petitioner. Because of his absconding, as noted by the investigating agency, a charge-sheet was submitted by showing him as an absconder and long after in the year 1997 without being surrendering in the Court of S.D.J.M. the petitioner moved for quashing of the order of cognizance on the ground that he has not been named in the FIR, and the statement of the co-accused implicating him is not sufficient to book him for the offence. If the logic which the petitioner has adopted shall be applied in every case, then the dacoits who are not known to the victim cannot be tried or prosecuted in the Court of law if after looting the victim they will abscond for some years and claim advantage in the aforesaid manner. Certainly that is not the position of law nor mandate of the principle of natural justice to grant such protection to persons booked for criminal acts and offences. Under such circumstance learned Addl. Sessions Judge was absolutely justified in passing the impugned order in the aforesaid Criminal Revision.

4. Apart from that, since the petitioner has availed the revisional jurisdiction in accordance with the provision in Section 397, Cr.P.C. and as per the aforesaid examination of position on record this Court finds no illegality in the same, therefore, this Court finds the application under Section 482, Cr.P.C., which in disguise a second revision application, is not maintainable in view of Sub-section (3) of Section 397, Cr.P.C.

5. Be that as it may, if the petitioner shall surrender in the Court of S.D.J.M., Berhampur and consent for a T.I. parade, learned S.D.J.M. shall get that conducted either by himself or by any other Magistrate, if available, most expeditiously before taking any further action in the matter. In that respect learned S.D.J.M. shall hear learned counsel for the petitioner as well as learned Public Prosecutor. In the event petitioner shall not give consent for a T.I. parade, then if

the Courts below will allow the petitioner to go on bail then such bail order should be accompanied with a condition for his personal appearance in the trial Court on each date of trial so that the victim and witnesses shall be in a position to identify if he was one of the culprits.

With the said observation, the Criminal Misc. Case stands dismissed.

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