

Muralidhar Satpathy Vs. State of Orissa

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Court : Orissa

Decided On : Nov-23-2006

Reported in : 2007(I)OLR122

Judge : R.N. Biswal, J.

Appellant : Muralidhar Satpathy

Respondent : State of Orissa

Disposition : Petition allowed

Judgement :

R.N. Biswal, J.

1. In this writ petition the petitioner sought for quashing the proceeding initiated against him in G.R. Case No. 3506 of 2004 arising out of Lingaraj P.S. Case No. 204 (24) dated 28.10.2004 pending before the Court of S.D.J.M., Bhubaneswar.

2. Bereft of unnecessary details, the facts giving rise to this writ petition are that on 28.10.2004, one Devi Prasad Tripathy of Bhub aneswar lodged a written report before the Officer-in-Charge of Lingaraj Police Station on the allegation that some time in the month of October, 2003 Pradeep Satpathy, son of the present petitioner, stating before him that he and his family members had started a Real Estate business, showed him a patch of land by the side of Bhubaneswar-Puri

Highway No. 2003 and further told that the said land would be purchased and after being plotted, would be sold to different customers, wherein he would be a partner, if he pays him Rs. 20,00,000/-. Since Pradeep Satpathy and the informant were lawyers by profession and both of them were juniors of Bijaya Kumar Mohanty, advocate Bhubaneswar, in good faith the informant arranged a sum of Rs. 17,43,000/- from his friends and paid the same to Pradeep Satpathy, but after receiving the money the latter tried to avoid him on several pretexts, whenever he asked about the money. Sometime in the month of March, 2004 as the informant insisted Pradeep to refund his money, he suggested him to take interest to which the informant refused. On 26.10.2004 at about 1.00 P.M. when the informant went to the house of Pradeep and asked for refund of money, the latter abused him in filthy language and attacked him with a base-ball bat. So he lodged a written report before the O.I.C., Lingaraj Police Station, on the basis of which the O.I.C. registered P.S. Case No. 204 of 2004 for the offence under Sections 420/294/506 I.P.C. and took up investigation. After conclusion of the investigation, he submitted Charge Sheet for the offence under Section 420/34, I.P.C. against Pradeep Satpathy and his father, the present petitioner, whereafter the S.D.J.M. took cognizance of the said offence against them. Being aggrieved with initiation of the criminal proceeding against him, the petitioner has preferred this writ petition.

3. Revision lies against the order of taking cognizance by a Magistrate. Such an order can also be challenged by invoking the provision under Section 482 of Cr.P.C. The writ jurisdiction can be invoked in such a matter when (i) the lower Court has assumed a jurisdiction which it does not have; (ii) has failed to exercise the jurisdiction which it does have; such failure occasioning a failure of justice; and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

4. Mr. G. Rath, learned Senior counsel for the petitioner advertent to the decision in *State of Haryana and Ors. v. Ch. Bhajan Lal and Ors.* : 1992 CriLJ527 submits that where the uncontroverted allegations made in the First Information Report or complaint and the evidence collected in support of the same do not disclose the commission of any offence or make out a case against the accused, this Court in exercise of power under Article 226 of the Constitution or under Section 482

Cr.P.C. can interfere to prevent abuse of the process of the Court or otherwise to secure the ends of justice. In the case at hand, even if the allegations made in the F.I.R. and the statement of the witnesses recorded under Section 161 Cr.P.C. are accepted in their face value and believed to be true in their entirety, still then they do not disclose commission of any offence against the petitioner and as such the proceeding against him should be dropped.

5. Went through the F.I.R. There is no whisper against any second accused, much less the petitioner. Similarly in his statement under Section 161 Cr.P.C. the informant is conspicuously silent with regard to involvement of any second accused in the crime in question. Of course, it is found from the statement of one Ashok Kumar Mishra that the informant handed over the cash of Rs. 17,43,000/- to accused Pradeep Satpathy with knowledge of his family members. Similarly Bijaya Kumar Sasmal in his statement under Section 161 Cr.P.C. stated that Pradeep Satpathy and the present petitioner took money from the informant in their house. Learned Additional Standing Counsel submits that Charge Sheet has been submitted under Section 420/34 I.P.C. against the petitioner. So, even if there is no direct allegation of cheating against him, still then when he along with the other accused in furtherance of their common intention dishonestly took money from the informant, that too in their house, the offence under Section 420/34 I.P.C. can be made out against him. To attract Section 34 of I.P.C. there must be material to show that each participating culprit had the same intention to commit certain act and each of them must share the intention of the other. In the case at hand, as stated earlier save and except making allegation against Pradeep Satpathy, the informant did not accuse any other person either in the F.I.R. or in the statement under Section 161 Cr.P.C. Even if the statement of Bijaya Kumar Sasmal that the petitioner along with his son, the co-accused took the money is believed to be true in its entirety, still then in absence of any material to show that the petitioner had also intention to cheat the informant and he shared the intention of cheating of the co-accused, the offence under Section 420/34 I.P.C. cannot be made out against him. On the same analogy the statement of Ashok Kumar Mishra also cannot attract the offence under Section 420/34 I.P.C. against the petitioner. The S.D.J.M. overstepped the limits of his jurisdiction by taking cognizance of the offence under Section 420/34 I.P.C. against the petitioner. So to prevent the abuse of process of

the Court or otherwise to secure the ends of justice, the proceeding including the order of taking cognizance against the petitioner deserves to be quashed.

Under such circumstances, the writ petition is allowed and the proceeding including the order of taking cognizance of the offence under Section 420/34 I.P.C. against the petitioner in G.R. Case No. 3506 of 2004 pending before the S.D.J.M., Bhubaneswar is hereby quashed.

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