

Ashok Kumar Mohapatra Vs. State of Orissa

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Court : Orissa

Decided On : Dec-04-2002

Reported in : 2003(I)OLR163

Judge : P.K. Tripathy, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482; Indian Penal Code (IPC) - Sections 279 and 304A

Appeal No. : Criminal Misc. Case No. 4228 of 1998

Appellant : Ashok Kumar Mohapatra

Respondent : State of Orissa

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : Brahmananda Panda and ;S.R. Mohapatra

Disposition : Application allowed

Judgement :

P.K. Tripathy, J.

1. In this application under Section 482, Cr.P.C. petitioner prays to quash the order of cognizance passed against him in G.R. Case No. 152 of 1998, which, as stated by learned counsel for the petitioner, has been wrongly typed as G.R. Case No.

154 of 1998 in paragraph 1 of the application under Section 482, Cr.P.C. That G.R., Case is pending in the Court of S.D.J.M., Dhenkanal. That case has been registered and cognizance has been taken for the offences under Sections 279/304-A, I.P.C.

2. There is no dispute at the Bar that on 16-3.1998 at about 6.15 P.M. there was an accident between a jeep bearing Registration No. OR-06-A-0414, on the National Highway (N.H.- 42) as a result of which the driver and the pillion rider of the scooter suffered death, one instantaneously and the other a short time thereafter. It is also not disputed at the Bar that the aforesaid jeep belongs to the Rural Water Supply and Sanitation Department (in short. 'RWSS') and was under the custody of the petitioner as the Assistant Engineer of Kamakshyanagar, though the owner as per the record is the Executive Engineer of the said department. It is also not disputed at the Bar that one Maheswar Patra by the time of accident was the driver of that Government jeep. Such facts are noted and mentioned in the report of the M.V.I, as Well as in the case diary.

3. The grievance of the petitioner is that the Inspector- in-charge of Dhenkanal Town P.S. for no reason explained on record took over charge of the investigation from the original Investigating Officer, made out a case to describe the petitioner as the driver of the jeep at the time of the accident and submitted the charge sheet accordingly though there, does not exist a prima facie case for the aforesaid offences against him. His contention is that the above name driver of the vehicle was driving that jeep on the date and at the time of accident and he absconded from the spot but no effort was made by the concerned I.I.C. either to trace or examine him before submission of the Final Form in the aforesaid manner. Petitioner has further stated and has also filed additional affidavit that because of absconding of the above named driver from the time of the aforesaid accident from the office of the Executive Engineer notice was issued to him on 26.3.1998 and also news item was published in the daily 'Dharitri' calling upon him to report in the office and because of such non-appearance he was put under suspension and that has been challenged by the said driver in the Orissa State Administrative Tribunal in O.A. No. 1461 (C) of 2001. So far as issue of notice to the said driver about his Order of suspension and pendency of the original application, learned

counsel for the State does not dispute.

4. Learned Standing Counsel on the other hand argues that since the statement of two witnesses, who were examined on 25.3.1998 and 10.4.1998, clearly indicates that petitioner was driving the jeep at the time of accident, therefore, the plea of the petitioner can be considered as his defence plea at the time of trial, and in view of existence of prima facie case the criminal proceeding is not liable to be quashed in exercise of the jurisdiction under Section 482, Cr.P.C.

5. It is the settled position of law and not disputed at the Bar that inherent power should be invoked in a case where the Court finds abuse of process of law or abuse of process of Court. Similarly, such provision should be resorted to when the Court shall find that, interference with the complained order is necessary in the interest of justice.

6. Keeping in view the aforesaid principle and perusing the case diary, it appears that the first Investigating Officer, after recording the F.I.R. at 8.30 P.M. on 16.3.1998 reached at the spot of occurrence not only on that date and examined two witnesses who are the owners of grocery shop and tea stall nearby the spot of occurrence but also after examining the petitioner on 18.3.1998 he made search of the driver of the jeep and found him absconding. The case diary dated 22.3.1998 also indicates that the first Investigating Officer issued V.H.F message to other police-stations for apprehending the said driver treating him as the accused. However, on 23.3.1998, for no reasons indicated in the case diary, the I.I.C. of the Town P.S. took over charge of the investigation and examined one Kamaniya Mohapatra on 25.3.1998 and one Manoj Kumar Rout on 10.4.1998 and on the basis of such statements submitted the charge-sheet against the petitioner. During the course of investigation by him he did not take any steps to examine the driver of the said jeep, i.e., Maheswar Patra. The spot visit of the first Investigation Officer does not indicate about any other shop or residential premises situated near the spot of occurrence. The spot map which has been prepared does not show or suggest about existence of shop and house of Kamaniya Mohapatra and Manoj Kumar Rout at or near the spot of accident. Though the accident occurred on 16.3.1998, those two witnesses did not explain in their statements relating to

their silence in the matter till their respective dates of making statements. In their statements each of them has stated that petitioner was driving the jeep and his family members were the occupants in that jeep and after the accident petitioner sought for the help of Manoj Rout to abscond from the spot whereas his family members went to Dhenkanal in a bus and said Manoj Rout carried the petitioner in a scooter to Dhenkanal. Peculiarly enough, the I.I.C. has not noted in the case diary as to how he could locate those two witnesses as eye-witnesses and why he wanted to examine them. The spot map prepared does not indicate about existence of shop and house of the said two witnesses at or near the spot of occurrence. Those two witnesses have not stated or explained as to why they did not make statement about the accident earlier to respectively 25.3.1995 and 10.4.1998. The Investigating Officer has also not noted any reason in that respect and above all, the I.I.C. did not even tried to locate the driver of the jeep nor even attempted to examine him as a witness. When admittedly in his statement petitioner stated before the first Investigating Officer that by the time of occurrence Maheswar Patra. the driver of the jeep, was driving the jeep, the I.I.C. should have made an attempt to examine that Maheswar Patra so as to ascertain if that statement of the petitioner is false. Therefore, from the aforesaid narration of facts and circumstances available from the case diary, it is glaring that when the first Investigating Officer was in the process of investigation and in the right track to locate the absconding driver, the I.I.C. for reasons not explained in the case diary, took over the charge of investigation and after recording statements of the above named two witnesses submitted the charge-sheet. This Court would not have invoked the inherent power to interfere with the Final Form submitted or cognizance taken if there would have been indication in the spot map about existence of houses and shop of the aforesaid two witnesses or in the alternative there would have been some explanation from the said two witnesses as to why their statements could not be recorded soon after the accident, because they claim to be the persons present at the spot of occurrence though it appears from the case diary that police arrived at the spot shortly after the occurrence. The case diary is completely silent about the bus in which the family members of the petitioner went, who were those family members. The I.I.C. even has not bothered to examine them or to verify that aspect. If that would have been done, there could

have been some relevancy to infer that the allegations made by the above named two witnesses is prima facie reliable at the stage of considering existence of a prima facie case. In the absence of any such proper but required steps taken by the I.I.C, non-examination of the driver of the jeep and his absconding soon after the occurrence are sufficient to quash the charge sheet submitted against the petitioner. Therefore, this Court finds continuance of the criminal proceeding against the petitioner shall be an abuse of process of the Court. Accordingly, the order of issue of process against the petitioner in G. R. Case No. 154 of 1998 of the Court of S.D.J.M., Dhenkanal stands quashed and the application under Section 482, Cr.P.C. is accordingly allowed.

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