

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.555 of 2014

AFR

Santanu Kumar Takri

....

Petitioner

Mr. D.R. Bhokta, Advocate

-Versus-

Gangadhar Nanda

....

Opposite Party

Mr. Sonak Mishra, ASC

CORAM:

JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT:11.11.2022

1. Instant petition under Section 482 Cr.P.C. is filed at the behest of the petitioner assailing the impugned judgment dated 5th December, 2013 passed in Criminal Revision Petition No. 01 of 2013 by the learned Additional District & Sessions Judge-cum-Special Judge (Vigilance), Jeypore whereby the order dated 10th July, 2012 passed in I.C.C. Case No. 22 of 2012 by the learned SDJM, Koraput was set aside and the matter was remitted back for its disposal in the light of the decision of the Apex Court in the case of **Raghunath Anant Govilkar Vrs. State of Maharashtra and Others (2008) 39 OCR (SC) 716.**

2. The opposite party as the complainant filed I.C.C. Case No. 22 of 2012 before the learned court below with the allegation that the petitioner while being at a meeting organized to address issues related to prevention of cruelty to animals delivered a speech stressed upon the demand of meat of the Indian cows and bulls abroad thereby committed an offence punishable 505(2) IPC. On such a complaint filed, the learned SDJM, Koraput recorded the

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initial statement of the opposite party under Section 200 Cr.P.C. and conducted an enquiry in terms of Section 202 Cr.P.C. and finally concluded that no prima facie case for an offence under Section 505(2) IPC is made out vis-à-vis the petitioner, who as the Chief District Veterinary Officer, Koraput and being a Veterinary surgeon had attended the meeting and without any criminal intent delivered the speech and it did fall within the exception of Section 505 IPC and with such a finding, dismissed the complaint. Being aggrieved of, the opposite party approached the Sessions court in Criminal Revision Petition No. 01 of 2013 which finally led to the passing of the impugned order under Annexure-3.

3. The revisional court disposed of the matter with a direction to the learned SDJM, Koraput to once again record the statement of the complainant and of the witnesses and to pass orders in the light of the Apex Court's decision in **Raghunath Anant Govilkar** (supra). In fact, the Sessions court considered the rival contentions on the premise as to whether sanction under Section 197 Cr.P.C is required or otherwise. But the learned SDJM, Koraput did not base his conclusion while dismissing the complaint on any such ground of sanction, whether, to be required in order to prosecute the petitioner. Rather, the decision dated 10th July, 2012 of the court of first instance was on the ground that the petitioner having participated in a meeting though in his official capacity has had no *mens rea* to create hatred or ill-will among any of the communities and hence, it stands covered by the exception of Section 505 IPC.

4. Perhaps both the sides advanced arguments before the Sessions court on the point of sanction, whether, it was necessary. Quite peculiar to notice that such a question of sanction under Section 197 Cr.P.C. was entertained by the revisional court when the decision of the learned SDJM, Koraput and dismissal of the CRLMC No.555 of 2014

complaint was not on such a ground but rested on absence of any intention on the part of the petitioner to commit an offence punishable under Section 505(2) IPC. In the aforesaid backdrop, the revisional court accepted the decision of **Raghunath Anant Govilkar** (supra) cited from the side of the opposite party, whereas, the petitioner had referred to **Panchanan Gantayat Vrs. Haribandhu Das & others 85(1998) CLT 513**. In fact, need of sanction under Section 197 Cr.P.C. whether to be necessary before prosecuting the petitioner was never an issue before the court of learned SDJM, Koraput, who rather dismissed the complaint for absence of guilty intent of the petitioner to create any hatred or ill-will between any of the local communities. Anyhow, the learned Sessions court considered such a question with regard to sanction and also received arguments probably being persuaded by the parties.

5. The learned SDJM, Koraput received evidence from the opposite party whose initial statement was recorded under Section 200 Cr.P.C. and also held an enquiry and received evidence and finally reached at a conclusion that the petitioner delivered the speech in a function organized by the Society for Prevention of Cruelty to Animals (SPCA) in the capacity of the Chief District Veterinary Officer, Koraput and alleged to have encouraged eating of cow meat by the Indians but is protected on account of good faith.

6. Whoever makes any statement in whatever form with intent or which is likely to create or promote feelings of enmity, hatred or ill-will between different communities on the grounds of religion etc. shall be liable for an offence punishable under Section 505(2) IPC for having committed an act of public mischief, however, there is an exception to it and if such act was in good faith and without any criminal intent.

7. The essential ingredients of Section 505(2) IPC are that (i) the accused made, published or circulated any statement, rumour or report; and (ii) he did so with intent to incite or which he knew likely to incite any class or community to commit any offence against its counterpart. In so far as the offence under Section 505(2) IPC is concerned, the person accused of having committed such an act must possess the criminal intent which is one of its primary constituents. In other words, without *mens rea* which is *sine qua non*, no any offence under Section 505 IPC can be said to have been committed by a person.

8. In the present case, the petitioner was a Government servant and he participated in a meeting and delivered a speech which was with regard to eating habits of the Indians and on other issues. The petitioner attended the said function as the Chief District Veterinary Officer, Koraput and according to the learned SDJM, Koraput, he had been invited there in his official capacity and the alleged speech was delivered which was without any criminal intent, rather, it was based on his experience and essentially to be an opinion shared or view expressed by him in good faith. It was thus held that the speech since was during a public meeting and whatever was addressed by the petitioner apparently in good faith and without any criminal intention to create or promote hatred or ill-will between the communities, it stands covered by the exception of Section 505 IPC. Such a conclusion of the learned SDJM, Koraput was entirely based on evidence received from the opposite party after an enquiry conducted under Section 202 Cr.P.C. which in the considered opinion of the Court could not have been interfered with in revision which was again on the premise of necessity or otherwise of sanction under Section 197 Cr.P.C which had never been an issue before the learned court below nor could it have been since

the order under challenge was in favour of the petitioner. In other words, the learned Sessions court ought not to have tinkered with the order dated 10th July, 2012 of the learned SDJM, Koraput by entertaining a plea of sanction. In other words, the conclusion of the Court is that the complaint was rightly dismissed with a decision that there was no any such culpable intent from the side of the petitioner to promote enmity or hatred or ill-will between any communities and such a finding since was based on evidence and after holding an enquiry, the learned Sessions court ought not to have disturbed it. Even by a bare reading of the facts alleged in the complaint, a copy of which is at Annexure-1, the Court does not find it offensive in a sense to form an opinion that the speech of the petitioner was in any way intended to cause or create or promote disharmony among the communities or any sections of the society rather may be held as a view which was unnecessary and unwarranted regard being had to the purpose of the event for which it was organized. Before parting with, it would be apposite to make a mention of a decision of the Apex Court in **Bilal Ahmed Kaloo Vrs. State of AP AIR 1997 SC 3483**, wherein, it has been held and observed that *mens rea* is an equally necessary postulate for the offence of Section 505(2) IPC also as could be discerned from the expression 'with an intent to create or promote or which is likely to create or promote' as appearing therein emphasizing and restating the law on the point referring to an earlier decision in **Balwant Singh and Another Vrs. State of Punjab (1995) 3SCC 214**.

9. Accordingly, it is ordered.

10. In the result, petition under Section 482 Cr.P.C. stands allowed. As a necessary corollary, the impugned order dated 5th December, 2013 under Annexure-3 passed in Criminal Revision Petition No. 01 of 2013 by the learned Additional & District and CRLMC No.555 of 2014

Sessions Judge-cum-Special Judge (Vigilance), Jeypore, Koraput is hereby set aside thereby restoring the order dated 10th July, 2012 of the learned SDJM, Koraput in I.C.C. Case No. 22 of 2012.

(R.K. Pattanaik)
Judge

Kabita

