

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 1164 of 2010,
CRLREV No. 1165 of 2010 &
CRLREV No. 1166 of 2010.

Applications under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973.

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CRREV No. 1164 of 2010

Muralidhar Sahu **Petitioner**

-Versus-

Union of India **Opp. Party**

CRREV No. 1165 of 2010

Subhash Mondal **Petitioner**

-Versus-

Union of India **Opp. Party**

CRREV No. 1166 of 2010

**Pradyut Kumar Banerjee
& another** **Petitioners**

-Versus-

Union of India **Opp. Party**

Advocate(s) appeared in this case:-

For Petitioners : Mr. Debasis Panda,
Advocate

For Opp. Party : Mr. P.K. Parhi,
Asst. Solicitor General of India
Mr. Udit Jena,
Central Govt. Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
4th August, 2022

SASHIKANTA MISHRA, J.

All the three revisions are directed against judgment dated 12.01.2009 passed by Learned J.M.F.C.-cum-Commandant, 199 Battalion. C.R.P.F., Phulbani in Case No.8 of 2008 in holding the accused petitioners guilty of the offence under Section 10(n) of the Central Reserve Police Force Act, 1949 (in short CRPF Act) and by sentencing them to imprisonment till rising of the Court, which was confirmed by learned Adhoc Additional Sessions Judge, Fast Track Court-II, Kandhamal, Phulbani in Criminal Appeal Nos.10/2010, 11/2010 and 12/2010 vide judgment dated 08.07.2010.

2. The prosecution allegation, briefly stated, is that one Head Constable, Hoshiar Singh, who was a member of the 199 Battalion of CRPF camping at Kalyan Mandap, Phulbani, expired. Upon coming to learn of his death, several personnel including the present petitioners came out of the

camp by creating commotion and falsely blamed the complainant for the death of the said Hoshiar Singh. It is also alleged that the accused persons shouted and tried to manhandle the complainant. The Assistant Commandant, namely, Peer Mohammed lodged a written report on 06.12.2008 before the J.M.F.C.-cum-Commandant 199 Battalion, CRPF Phulbani. The petitioners denied the allegations. Prosecution examined five witnesses to prove its case. After going through the evidence on record, learned trial Court held that the accused petitioners are guilty of the offences of indiscipline and disobedience of orders which are prejudicial to good order and discipline of the force under Section 10(n) of CRPF Act, and convicted them thereunder. As regards the sentence, it was held that though the accused persons are first offenders of this nature, they acted in a manner which is highly unbecoming of members of the disciplined force and that the magnitude of offences committed by them does not qualify them for release under the Probation of Offences Act, 1958 as in CRPF, conduct, discipline and obedience play an important role in dictating the dynamics of its success. As such, the trial court awarded

simple imprisonment till rising of the Court as per his judgment passed on 12.01.2009.

The accused persons carried the judgment in appeal to the Court of Sessions, which was heard and disposed of by learned Adhoc Additional Sessions Judge, FTC, Kandhamal. The lower appellate court examined the evidence on record and found that the alleged offences are clearly made out. The evidence of the complainant found full corroboration from the other witnesses and nothing was brought out in cross-examination to discredit the version of the prosecution witnesses. Thus, holding that the ingredients of the offence under Section 10(n) of the CRPF Act are established, learned lower appellate court found no reason to interfere with the order of conviction and sentence passed by the trial court.

Being aggrieved, the petitioners have approached this Court by filing the aforementioned criminal revisions.

3. Heard Mr. D. Panda, learned counsel for the petitioners and Mr.P.K. Padhi, learned Asst. Solicitor General of India for Odisha.

4. Mr. D. Panda has assailed the impugned order by raising the following grounds:

(i) The charges framed were improper as Section 10(n) of CRPF Act, under which the petitioners were charged is not made out at all.

(ii) There are material discrepancies in the evidence of the complainant which has been brought out in cross-examination but ignored by the courts below.

(iii) The trial court committed error in relying upon the evidence of P.Ws. 2 and 3, who cannot be treated as good witnesses having themselves decamped without permission of the authority.

(iv) The complainant has not specified the source from which he came to know about the incident at the camp and has also not specified as to who exactly tried to manhandle him from out of the 25 to 30 personnel present at the District Headquarters Hospital, Phulbani at the relevant time.

(v) From the facts stated in the complaint as well as the

evidence of the prosecution witnesses, it is clear that the prosecution has adopted a pick and choose method in citing witnesses to prove its case, which only proves its malafides.

5. Per contra, Mr. P.K. Padhi contends that Section 10(n) of CRPF Act refers to all such acts or omission which are prejudicial to good order and discipline, and therefore, there is no infirmity in framing charge under the said offence. It is further contended that there is clear evidence through the version of prosecution witnesses that the accused persons had violated the order of the Guard Commander by leaving the camp at night. It is further brought out in evidence that the petitioners abused the complainant and acted in a manner unbecoming of members of the armed force. According Mr. Padhi therefore, the impugned order passed by the trial court as confirmed by the appellate court does not require any interference whatsoever.

6. Ordinarily this Court exercising revisional jurisdiction would be slow to interfere with concurrent finding of fact unless it is shown that the impugned order

suffers from serious illegality or perversity. Keeping the above proposition in mind this Court deems it proper to test the correctness of the impugned orders in light of the contentions put forth before it.

It is firstly contended by Mr. Panda that the offence of insubordination is covered under section 10(e) of the CRPF Act., which runs as follows:

“10. Every member of the force who-

xx xx xx
(e) is grossly in-subordinate or insolent to his
superior officer in the execution of his office ;”

Section 10(n) of the CRPF Act on the other hand is a general provision which relates to offences not specified in the Act. Since the alleged offences are specified under section 10(e) of the CRPF Act, according to Mr. Panda, the charges framed under Section 10(n) of the CRPF Act is intrinsically invalid.

While it is true that the language of Section 10(n) does lead to the interpretation that only such of the offences as are not specified in the Act are to be covered under it, yet it is well settled that mere defect in charge, if at all, cannot be treated as fatal to the case of prosecution unless it is shown

that the same has seriously prejudiced the defence. In the instant case, it has not been shown as to how framing of charge under Section 10(n) was prejudicial to the defence. Therefore, and to the above extent therefore, this Court is not inclined to accept the contention so raised by Mr. Panda. However, it is observed that while furnishing a copy of the complaint filed by the complainant, the charge is framed as under.

“The charges against you that you committed officers of indiscipline, disobedience and other misconduct, which are prejudicial to good order and discipline of the force, under section 10(n) of CRPF at 1949? Do you plead guilty to the said charges?”

Section 211 of Cr.P.C. relates to content of charge and reads as under:

“211. Contents of Charge.- 1. Every charge under this Code shall state the offence with which the accused is charged.

2. If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

3. If the law which creates the offence does not give it any specific name so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

4. The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

5. The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

6. The charge shall be written in the language of the Court.

7. If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact date and place of the previous, conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed.”

7. It was therefore, incumbent upon the Court to ensure that the charge should have stated the circumstances under which the offence was committed by stating the relevant facts. However, Section 215 of Cr.P.C. provides that no error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice. In the instant case, as already stated, a copy of the complaint was forwarded to the accused along with the summons. The complaint contains the factual

details. It is not a case where non-mentioning of all the relevant particulars of the offence in the charge could have misled the accused persons. On the contrary, having received a copy of the complaint, the accused persons must be held to have had adequate notice of the offence for which they were charged with.

Mr. Panda has next pointed out several discrepancies in the evidence of the prosecution witnesses, which according to him, have been ignored by the trial court. Referring to the evidence of P.W.-1, the complainant, Mr. Panda contends that firstly, his entire evidence must be discarded as being based on hearsay in view of his admission in cross-examination that he was told about the above acts of indiscipline, disobedience and other misconduct by the accused persons by the Washerman- Md. Nur Salam Shaikh, Safai Karmachari- Phani Bhusan Barman, Barber-Sanjoy Mondal and Paban Kumar Choudhury. Therefore, whatever he has stated cannot be treated as admissible evidence. To appreciate the contentions put forth as above, this Court has perused the evidence of P.W.-1, wherein he has stated that

after being informed of the sudden illness of Hoshiar Singh, P.W.-1 rushed to the District Headquarters Hospital. Phulbani but by the time he reached, said Hoshiar Singh had already died. He then informed to all concerned and started follow-up action. It is not clarified as to who all he informed and what follow-up action he started. Be that as it may, he further states that at around 21.30 hours he saw around 25-30 personnel of his company, who had come there from the camp on excuse of seeing the above name deceased without any permission. P.W.-1 does not say as to how he came to know that the personnel had come to the hospital without permission. He further states that the accused persons suddenly tried to manhandle him for which he had to hide for his safety in a nearby room of the hospital. He further states that later he came to know that the above named accused persons had also created commotion in the camp at Kalyan Mandap for instigating and compelling the other company personnel by falsely holding him responsible for the said death. This part of the evidence, as already stated, is based on hearsay and therefore can not be accepted. Therefore, the only thing that can be taken into account from the testimony

of P.W.-1 is that the accused persons suddenly tried to manhandle him by falsely blaming him for the death of Hoshiar Singh. But in cross-examination, he admits that he had not stated in his complaint petition he had to hide for his safety in a nearby room of the hospital as also had not specified the exact utterances of the accusations leveled against him by the accused persons. In so far as P.Ws.-2 and 3 are concerned, both of them have admitted that they had also gone to the hospital along with other personnel and particularly in cross-examination, P.W.-3 stated in his answer to a question as to who had given permission to leave the camp on that day, that he went along with other personnel as the accused persons were asking all of them to go to the hospital. Obviously no reliance can be placed on the version of P.Ws.2 and 3 because they were themselves guilty of decamping without permission of the authority. The question is, why were they not prosecuted along with the accused persons. This leads credence to the contention raised by Mr. Panda that the prosecution has adopted a pick and choose method to prosecute the present petitioners from amongst the 25 to 30 personnel, who had all gone to the

hospital and created commotion. Significantly, P.W.-4 admits in cross-examination that he had no personal acquaintance with the accused persons prior to the incident and that he had discussed with his Company Commander on 04.12.2008 about the incident, which suggests that he was roped in as a witness after due deliberation. From the evidence of P.W.-5, it is seen that around 40 personnel came out of the barrack and created commotion, though their names have not been specified. It is stated that he asked them not to leave the camp but they refused to obey his orders and left the camp for District Headquarters Hospital, Phulbani. This again lends considerable support to the contention advanced by Mr. Panda that the prosecution adopted a pick and choose method to prosecute only the accused persons leaving out the others from the group of 30-40 personnel. Significantly, P.W.-5 admits in cross-examination that he heard the personnel discussing “COMPANY COMMANDER CHM KO TENSION DETA THA ISLIYE WO MAR GAYA. DUTY WALE KO CHHOD KAR BAKI SAB CHM KO DEKHNE JAYENGE”, but he cannot say who were those personnel.

Thus, it is clear that there are glaring gaps in the evidence of the prosecution witnesses, which leaves room for reasonable doubts. It goes without saying that the prosecution case must be established beyond reasonable doubts. In the instant case, in view of what has been discussed hereinbefore, it cannot be said that the prosecution case is beyond all reasonable doubts.

8. For the forgoing reasons therefore, the impugned order of conviction and sentence passed by the learned trial court as confirmed by the lower appellate court cannot be sustained in the eye of law and are therefore, set aside. The petitioners are held not guilty of the offences under Section 10(n) of the CRPF Act and therefore acquitted therefrom.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 4th August, 2022/ A.K. Rana