

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.407 of 2017

Naresh Kumar Patel

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Appellant

Mr. Asok Mohanty, Sr. Advocate

-versus-

Ramesh Chandra Sahu and others

Respondents

Mr. D. Panda, Advocate for Respondent No.1

Mr. M.K. Khuntia, AGA for Respondent Nos.2 to 4

CORAM:

THE CHIEF JUSTICE

JUSTICE CHITTARANJAN DASH

ORDER

17.10.2022

Order No.

16. 1. This appeal is directed against the two orders passed by the learned Single Judge. One is the judgment dated 27th January, 2015 of the learned Single Judge allowing W.P.(C) No.9195 of 2008 filed by Respondent No.1 Ramesh Chandra Sahoo whereby the learned Single Judge directed the Reserve Inspector of Police (RI), Khurda to refund to Respondent No.1 herein the sum of Rs.2,00,000/- together with interest. The second is to an order dated 9th October, 2017 passed by the learned Single Judge dismissing Misc. Case No.17216 of 2017 filed by the present Appellant seeking recall of the aforementioned order. The said application was dismissed on the ground of delay as it was filed more than two years after passing the original order. It was also dismissed on the ground of maintainability.

2. It must be noticed here that the delay in filing the present appeal has been condoned by an order dated 13th May, 2019 of this Court. The second factor is to be noted that during pendency of the present appeal, the Appellant filed I.A. No.534 of 2019 in which *inter alia* he stated that pursuant to the aforementioned judgment dated 27th January, 2015 Respondent No.4 i.e. Deputy Commissioner of Police, Bhubaneswar had issued orders for deduction from the salary of the Appellant, the entire sum recoverable in 10 equal monthly instalments of Rs. 24,759/- each. It was stated that by the time an application was filed on 4th August, 2019, a sum of Rs.2,47,585/- had already been deducted from the Appellant and the pay slips evidencing such reduction were annexed as Annexure-8 series.

3. The background facts are that Respondent No.1 Ramesh Chandra Sahoo who had filed W.P.(C) No.9195 of 2008 and one Narayan Nayak, were Constables at the Reserve Office, Khurda (RO). They were commanded from the R.O. Khurda to the District Police Office, Khurda (DPO) for cash escort duty. On 20th May, 2005 both Constables escorted cash of Rs.24,97,853/- from the DPO to the RO, Khurda. On 26th May, 2005 again they escorted cash of Rs.12,30,967/-. They disbursed some cash at the RO and other police posts. Due to non availability of vehicles, they could not disburse the remaining cash of Rs.8,27,888/-. They kept this in an iron chest of the magazine guard under lock and key and kept the key with them. They performed magazine guard duty on 30th May, 2005. While Respondent No.1 was relieved from magazine guard duty on 31st May, 2005 at 4 PM Narayan Nayak continued in such

duty. On 1st June, 2005 Respondent No.1 was again detailed for cash escort duty along with Havildar Ashok Sethy and Constable Amiya Kumar Biswal. At around 11 pm on 1st June, 2005 they returned to the RO with cash. Since it was late in the night, they kept the cash and vouchers in the iron chest in the presence of the magazine guard, Sentry D.P. Kullu. The key of the iron chest was kept with Respondent No.1 even on 1st June, 2005.

4. On 2nd June, 2005 at 7.30 am, the iron chest was opened by Respondent No.1 in the presence of Havildar Ashok Sethy, Constables A.K. Biswal, Narayan Nayak and D.P. Kullu when the cash was counted for disbursement, a shortage of Rs.4,00,000/- was detected. This was reported to the R.I. Khurda who scrutinized the vouchers and confirmed the shortage.

5. On 3rd June, 2005 purportedly under the duress of the R.I. both Respondent No.1 and Narayan Nayak deposited Rs.4,01,112/- in equal instalments in order to avoid departmental proceedings. The said amount was then paid/disbursed to the staff to whom the payment was due. This was subsequently reported to the Superintendent of Police, Khurda who in turn directed the IIC, Sahid Nagar P.S. to look into the matter.

6. On 3rd December, 2005, the S.I. of Police, Sahid Nagar Police Station undertook an enquiry during which Constable Narayan Nayak confessed to his guilt in presence of S.I. as well as Respondent No.1. Apparently, an F.I.R. being Sahid Nagar P.S.

Case No.169 of 2006 under Sections 451/380 IPC was registered, the trial in the said case is stated to be in progress.

7. Respondent No.1 filed W.P.(C) No.9195 of 2008 this Court for a direction to the State authorities to refund him the sum of Rs.2 lakhs along with interest which had been deposited with the R.I., Khurda. The present Appellant was not impleaded by name but in the writ petition, the R.I., Khurda was impleaded as Opposite Party No.4.

8. A common counter affidavit appears to have been filed by the Additional Standing Counsel ignoring the parawise comments provided by the present Appellant. On 27th January, 2015, the learned Single Judge allowed the W.P.(C) No.9195 of 2008. In the operative portion of the said order the following directions were issued :

“ Under the circumstances, while allowing the writ petition, this Court directs the R.I., Khurda-opposite party no.4 to refund the amount collected from the petitioner under duress. Considering the submissions of the petitioner that for making this deposit the petitioner has taken a bank loan with heavy interest as available at Annexure2, this Court directs the R.I., Khurda-opposite party no.4 also to pay interest @ it is charged by the Bank to match the entire loan refund. The refund as directed herein be worked out within a period of two weeks from the date of communication of this order.”

9. An intimation was received by the Appellant from the Commissioner of Police, Bhubaneswar to implement the order. The Appellant then requested the Commissioner to seek review of the order passed by the learned Single Judge. Ultimately on 13th

September, 2017 Misc. Case No.17216 of 2017 was filed by the Appellant seeking recall of the order dated 27th January, 2015. The said application came to be disposed by the second impugned order dated 9th October, 2017.

10. This Court has heard the submissions of Mr. Asok Mohanty, learned Senior Counsel for the Appellant, Mr. Debashis Panda, learned counsel appearing for Respondent No.1 and Mr. M.K. Khuntia, learned AGA for the State.

11. At the outset, Mr. Mohanty appearing for the Appellant states that the Appellant has no grievance about refund being ordered by the learned Single Judge in favour of Respondent No.1. His only grievance is that with the amount deposited by Respondent No.1 having been paid to the staff of the Government, it ought not to have been directed to be recovered from the salary of the present Appellant. He submitted that the State authorities had wrongly understood the direction of the learned Single Judge to mean that the present Appellant was personally responsible to make the refund of the amount deposited by Respondent No.1. He stressed that the amount was in fact disbursed as the staff salary and not retained by the Appellant at any point of time.

12. Mr. Debashis Panda, learned counsel appearing for Respondent No.1 states that he is only concerned that Respondent No.1 should get the benefit of implementation of the order of the learned Single Judge. He pointed out how till date he is yet to receive the refund amount together with interest ordered by the learned Single Judge.

He points out that in fact he has filed Contempt case in this regard before the learned Single Judge in which notice has been issued.

13. Mr. Khuntia, learned AGA submitted that the action was taken because the impugned order stated that it is the R.I. who should make the refund and it was therefore understood that it was the R.I. who was personally responsible to make the refund of the amount.

14. Certain facts are undisputed. One is that Respondent No.1 along with Narayan Nayak were constrained to make deposit of Rs.4,01,112/- only to avoid departmental proceedings. Subsequently, it was found that Narayan Nayak confessed to the guilt. In other words, Respondent No.1 was not in any way responsible for the shortage in the cash which was detected. Even the State has not proceeded against Respondent No.1 departmentally since it accepted the above version on the basis of which F.I.R. was registered at the Sahid Nagar P.S.

15. The second factor to be noted is that the amount deposited by Respondent No.1 and Narayan Nayak was immediately disbursed to the staff as salaries. It was not retained at any point of time either by them and definitely not by the R.I. The third factor to be noted is that the R.I. was impleaded by designation as OP No.4 in the W.P.(C) No.9195 of 2008 and not by name. Therefore a direction was issued by the learned Single Judge that the R.I. should refund the above amount to Respondent No.1 could not have been understood that the R.I. from his personal fund has to refund the amount. The direction obviously meant that the State should refund

the amount. In the circumstances, the action of Respondent No.4 in directing the deduction of the entire amount in 10 instalments from the salary of the present Appellant was uncalled for and not legally justified.

16. With the Appellant not having benefited in any manner whatsoever as a result of the shortage fund in the cash and with the amount deposited by Respondent No.1 and Narayan Nayak already having been disbursed to the staff as salaries, there was no justification whatsoever in proceeding to deduct the said amount from the salary of the present Appellant.

17. For the aforementioned reasons, the following directions are issued.

(i) The entire amount deducted from the salary of the Petitioner i.e. Rs.2,47,585/- be immediately refunded to the Appellant within a period of four weeks from today failing which the said amount will be refunded together with simple interest @ 6% per annum from the date of filing of I.A. No.534 of 2019 i.e. 6th August, 2019 till the date of payment.

(ii) Pursuant to the direction issued by the learned Single Judge in W.P.(C) No.9195 of 2008, the amount due to Respondent No.1 be refunded to him by the State within a period of four weeks from today failing which again simple interest of the said amount will become payable to Respondent No.1 @ 6 % per annum from the date of

judgment of the learned Single Judge i.e. 13th August, 2015 till the date of payment.

18. The writ appeal is disposed of in the above terms. A copy of this order be produced before the learned Single Judge before whom the contempt petition is pending for further directions.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge



KC Bisoi