

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1218 of 2019

Jayadev Barik & another. Petitioners

*M/s. R.N. Behera, L.K. Padhi, S.N. Sahoo,
A. Parida, H.N. Palai, Advocates*

-versus-

State of Odisha & others. Opposite Parties

*Addl. Standing Counsel – For O.P. No.1-State
M/s. J. Dash, A.K. Sahoo,
Advocates – For O.P. Nos.2&3*

**CORAM:
JUSTICE S. PUJAHARI**

**ORDER
17.08.2022**

**Order
No.**

05. **1.** This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) seeking for quashing of the order dated 24.03.2018 passed by the learned Special Judge, Keonjhar, taking cognizance of offences under Sections 341, 294, 186, 353, 506/34 of IPC read with Section 3(1)(r) of the S.C. & S.T. (PoA) Act against the petitioners in Special Case No.124 of 2017, arising out of Patna P.S. Case No.166 dated 28.11.2017.

2. Heard the learned counsel for the parties and perused the relevant papers on record vis-à-vis the averments made in the application of the petitioners.

3. It is alleged that while a tractor engaged in illegal transportation of sand had been detained by the Informant – Prafulla Kumar Sethy, Revenue Supervisor, and Sarthak Sarathi Barik, Revenue Inspector, Patna Tahasil, the petitioners came to the spot, i.e., the premises of Tahasil Office, Patna, altercated with the Informant and the Revenue Inspector, abused and threatened them with life, assaulted the Revenue Inspector and thereby deterred those public servants from discharge of their official duties. Pursuant to a written report being lodged, a case was registered at Patna Police Station and after completion of investigation Police submitted charge-sheet for the offences indicated above, and basing upon the same the impugned order has been passed by the learned Court below against the accused-petitioners.

4. It is the contention of the learned counsel for the petitioners that from the allegation and materials on record no case being made out against the petitioners for the offences taken cognizance of, the impugned order needs interference by this Court. He has laid emphasis on his contentions that the basic ingredients of the offence under Section 3(1) of the S.C. & S.T. (PoA) Act are conspicuously absent, and no cognizance could have been taken for the offences under Sections 186 and 353 of IPC for want of complaint by the public servant concerned as required under Section 195 of Cr.P.C. It is argued by him that since the offences under Sections 186 and 353 of IPC can not be split from the other offences alleged, the entire prosecution needs to be quashed being not maintainable for want of complaint under Section 195 of Cr.P.C. The learned counsel has cited certain pronouncements of the Apex Court and some of the High Courts in a bid to buttress his contentions.

5. On the other hand, the learned counsel for the State submits that the present is not a stage to make any threadbare analysis of the materials on record, and that the petitioners may raise their points at the appropriate stage of the proceeding before the trial Court.

6. The basic ingredients of the offence under Section 3(1)(r) of the S.C. & S.T. (PoA) Act, 1989 are that, the accused intentionally insults or intermediates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and that the incident takes place within public view. A Full Bench of the Apex Court in the case of **Hitesh Verma vrs. The State of Uttarakhand and another**, reported in (2020) 10 SCC 710, held as under:-

“13. XXXX XXXX All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is or account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the

Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. Xxxxxx”

7. A bare reading of the FIR would show that there is no mention much less any accusation regarding any caste aspersion. The FIR also does not disclose the caste of either side. What it appears, the petitioners allegedly got enraged due to their tractor being detained or seized by the Informant. From the materials on record, therefore, it can not be said that there was any intention of the petitioners to insult or intimidate the Informant on account of his being a member of Scheduled Caste. Hence, no case under Section 3(1)(r) of the S.C. & S.T. (PoA) Act can be said to have been prima-facie made out.

8. Section 195(1) of Cr.P.C. bars the Court to take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) except on the complaint in

writing of the public servant concerned. In the case at hand, admittedly, there is no complaint as defined in Section 2(d) of the Cr.P.C. In that view of the matter, no cognizance could have been taken by the Court below under Section 186 of IPC.

9. The Court, however, is unable to agree with the learned counsel for the petitioners that the offence under Section 353 of IPC, so also the other offences under IPC being integrally connected with Section 186 of IPC, the bar contemplated under Section 195 of Cr.P.C. also comes to operate so as to render the whole order of cognizance to be void. I have gone through the following authorities as cited by the learned counsel for the petitioners.

- (i) AIR 1961 Orissa 14 (V 48 C 4)
(Batakrushna Das vrs. The State)
- (ii) 1987 CRI.L.J. 1750 (M.P. High Court, Indore Bench) **(Ashok and others vrs. The State)**
- (iii) (1999) CRI.L.J.1244 **(Ramji Bhikha Koli and others. Vrs. State of Gujarat)**

In both **Batakrushna Das** (supra) and **Ashok** (supra) reference was made to **Bashir-Ul-Hug vrs. State of West Bengal**, reported in AIR 1953 SC 293 in which their Lordships of the Apex Court held that the provisions of Section 195(1) Cr.P.C. are mandatory and the Court has to see what is the nature of the offence alleged against the accused. If the offence, in essence, is one which requires compliance with the provisions of Section 195 Cr.P.C., merely by changing the garb or label of the offence, and by describing the offence as one punishable under some other section of the IPC, the mandatory provisions of Section 195 Cr.P.C. can not be evaded. In the case of **Ramji Bhikha Koli** (supra), the Gujarat High Court held that where it is not possible to split up the transaction to maintain a valid prosecution for the offences not mentioned in Section 195 of the Cr.P.C., the bar shall operate upon the entire prosecution, but if the facts give rise to distinct offences, some attracting the operation of Section 195 and others not

so, the bar can operate only regarding the former and not regarding the latter.

10. The learned counsel for the petitioners has also placed reliance on another decision of this Court in the case of ***Makaradhwaj Sahu and another vrs. The State***, reported in AIR 1954 Orissa 175, wherein it was held as follows:-

“3. So far as the offence under S.353, I.P.C. is concerned, I am inclined to accept the contention of learned counsel that this offence is so connected with the primary offence of offering resistance to a public servant that it cannot, in the circumstances, be said to have constituted a separate and individual offence. It is said that in offering resistance one of the petitioners pushed the forest guards and that there was no intention to commit assault; what the two petitioners did was merely to cause obstruction to the search.”

11. Testing the fact situation of the case at hand in the touch stone of the pronouncements quoted above, this Court finds no legal impediment in maintaining the prosecution for the offences not mentioned in

Section 195 of Cr.P.C. It is alleged in this case that while the Tractor was kept parked within the premises of the Tahasil Office after being seized, the petitioners arrived there and indulged in the overt acts of abuse, intimidation, assault etc. From these overt acts, it can be assumed that they reacted to the action that had already been taken by the Informant, and to deter him from taking further course of action in relation to the Tractor. To put in other words, the offences under Sections 341, 294, 353 and 506/34 of IPC can not be said to have been integrally connection with the one under Section 186 of IPC or to be incapable of being split up. From the materials on record, the offence under Sections 341, 294, 353 and 506/34 of IPC being found to have been made out, the impugned order to that extent needs no interference. The impugned order is quashed to the extent it relates to the offence under Section 186 of IPC and Section 3(1)(r) of the S.C. & S.T. (PoA) Act.

12. The CRLMC is, accordingly, disposed of with the modification of the impugned order, as indicated above.

13. Urgent certified copy of this order be granted on proper application.

**(S.Pujahari)
Judge**

MRS

