

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 20306 of 2019

Ramesh Kumar Mukhi

.....

Petitioner

Mr. S.A. Pattnaik, Adv.

Vs.

State of Orissa and others

.....

Opposite parties

Mr. J.P. Pattnaik, GA

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE V. NARASINGH

ORDER

08.07.2022

Order No.

07.

This matter is taken up through hybrid mode.

2. Heard Mr. S.A. Pattnaik, learned counsel for the Petitioner and Mr. J.P. Pattnaik, learned Government Advocate appearing for the State-Opposite Parties.

3. The Petitioner has filed this Writ Petition assailing the Order dated 30.10.2018 passed in O.A. No. 741 (C) of 2016 under Annexure-18, by which the Odisha Administrative Tribunal, Cuttack Bench, Cuttack did not feel inclined to interfere with the punishment imposed by the Authority against the Petitioner and dismissed the Original Application.

4. Mr. S.A. Pattnaik, learned counsel for the Petitioner vehemently contended that the Petitioner, while working as S.I. of Police-cum-Officer-in-Charge of Mahakalpada Police Station under Kendrapara district, had taken investigation of Mahakalpada P.S. Case No. 01/2006 registered under Sections 363/366(A) IPC. But on the basis of the report forwarded by Circle Inspector of Police, Marshaghai that the Petitioner has forwarded the accused to the Court for the offence under Sections 363/366(A) IPC without implicating him under Section 376 IPC, Kendrapara District Proceeding No.8/2006 was initiated against the Petitioner by the Superintendent of Police, Kendrapara and after due inquiry,

punishment was imposed on the Petitioner by awarding one black mark for his gross negligence in duty, which was affirmed in appeal as well as revision. Being aggrieved by the said order, the Petitioner approached the Tribunal contending that the authorities have not applied their mind in passing the order impugned. But the Tribunal without considering the facts in proper perspective, dismissed the Original Application. Therefore, the Petitioner has approached this Court by filing the present Writ Petition.

5. Mr. J.P. Pattnaik, learned Government Advocate appearing for the State-Opposite Parties contended that there is gross negligence on the part of the Petitioner as Investigating Officer inasmuch as instead of implicating the accused under Section 376 IPC, he has deliberately booked him under Section 366(A) IPC to get some benefit. Subsequently, when the Circle Inspector found that the Petitioner has forwarded the accused to the Court for the offence under Section 366(A), a Departmental Proceeding was initiated against him wherein he was found guilty of charge and ultimately punishment was imposed on him and, as such, in appeal and revision, the same was confirmed. Therefore, the Tribunal has not committed any error in affirming the punishment imposed by the Authority, which does not require any interference of this Court.

6. Having heard learned Counsel for the parties and after going through the records, this Court finds that the Petitioner, while working as S.I. of Police-cum-Officer-in-Charge of Mahakalpada Police Station under Kendrapara district, took up investigation of Mahakalpada P.S. Case No. 01/2006 registered under Sections 363/366(A) IPC. But on the basis of the report forwarded by Circle Inspector of Police, Marshaghai that the Petitioner has forwarded the accused to the Court for the offence

under Sections 363/366(A) IPC, without implicating him under Section 376 IPC, Kendrapara District Proceeding No.8/2006 was initiated against the Petitioner by the Superintendent of Police, Kendrapara and after inquiry and issuance of 1st and 2nd show cause notice, the Petitioner was found guilty of charges and was imposed with punishment of withholding the increment of six months with cumulative effect amounting to one black mark for his gross negligence in duty and suppression of vital information and treating the period of suspension from 08.04.2006 to 07.08.2006 as such. Against such punishment order, he preferred appeal before the I.G. of Police, Central Range, Cuttack, but the same was rejected. Thereafter, he preferred Revision before the D.G. and I.G. of Police, which was also rejected. Being aggrieved by the Orders passed by the Authorities, the Petitioner approached the Tribunal on the ground that by the time he forwarded the accused to the Court on 06.01.2006, the statement of the victim recorded under Section 164 Cr.P.C. was not available with him and there was also no information given to him regarding such recording of the statement and, therefore, he had no occasion to add Section 376 IPC against the accused while forwarding him to the Court. The Disciplinary Authority, the Appellate Authority and the Revisional Authority have not examined such factual position and mechanically imposed upon him with the impugned punishment.

7. The Tribunal, after due adjudication, came to a conclusion that the stand taken by the Petitioner that he had no knowledge of recording statement of the victim under Section 164 Cr.P.C. and there was no material before him to come to a conclusion that the case under Sections 363/366(A) IPC has turned to one under Section 376 IPC, which is a grave offence is untenable. Therefore,

on going through the Inquiry Report, as well as Appeal and Revision so also the defence statement filed by the Petitioner, the Tribunal held that there is ample evidence to show that the Petitioner was the Investigating Officer of the case and, therefore, he cannot take the plea that he was not cognizant of the fact that the statement of the victim under Section 164 Cr.P.C. had been recorded by the Court. Therefore, imposition of penalty on the Petitioner is well justified and so holding dismissed the Original Application filed by the Petitioner.

8. In the above view of the matter, this Court is of the considered view that being the Investigating Officer, the Petitioner ought to have seen the records available before him and also the recordings under Section 164 Cr.P.C. Therefore, he cannot take a plea that he was not aware regarding the recording of the statement of the victim under Section 164 Cr.P.C. to add the charge under Section 376 IPC against the accused person and, as such, the same is after thought of the Petitioner.

9. In view of such position, this Court does not find any illegality or irregularity committed by the Tribunal in passing the order impugned so as to warrant interference with the same.

10. Accordingly, the Writ Petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

Ashok/Santoshi

(V. NARASINGH)
JUDGE