

Orissa High Court

Ladi Vyakuntam And Ors. vs Gumudi Chittibabu on 20 February, 1992

Equivalent citations: 1992 II OLR 157

Author: K J Roy

Bench: K J Roy

JUDGMENT K.C. Jagadeb Roy, J.

1. This case has been filed for quashing the criminal proceeding in respect of which cognizance has been taken by the Sub-divisional Judicial Magistrate, Parlakhemundi in ICC Case No. 17 of 1988 Under Section 199 read with Section 34 of the Indian Penal Code, Petitioner No. 1 and the opp. party are the partners of 'Jyoti Rice and Flour Mill'. Since they had dispute relating to their partnership business, the matter was referred to a body of Arbitrators consisting of 4 persons, two having been nominated by each party. There was also an umpire appointed by the parties. Petitioner Nos. 2 and 3 are the Arbitrators appointed by the opp. party and petitioner No. 4 is the Arbitrator appointed by petitioner No. 1. The other Arbitrator is not a party to the case as no proceeding has been initiated against him.

2. In the complaint petition filed by the opp. party, it was alleged that the preset petitioners 2, 3 and 4 in order to injure the complainant, knowing fully well that it was false and having not believed it to be true, procured the assistance of accused R. Satyanarayan and created a document antedating the same to 22-11-1987 which was styled as a majority award. The document was scribed by the said R. Satyanarayan and signed by the present petitioner Nos. 2, 3 and 4. Under the award, the opp. party was required to pay a sum of Rs. 63,161.45 paise to the complaint petition are not very much material for disposal of this case.

3. Mr. C. A. Rao, learned counsel for the petitioners urged the following points :

(1) On the face of it, the allegations made in the complaint petition does not make out a case Under Section 199, IPC.

(2) The opp. party has filed a civil suit in the Court of the Sub- ordinate Judge, Parlakhemundi for declaration that the said award dated 22-11-1987 is not binding on him as the award has been antedated and is the out-come of collusion amongst the present petitioners and there is further prayer in the suit for injunction against the Arbitrators not to release the gold in favour of the present petitioner No. 1 in terms of the Arbitration agreement. This dispute\being of a civil nature, it will be an abuse of the process of the Court to allow the present criminal proceeding to continue when the relief claimed by the opp. party is subjudice in the Civil Court.

(3) Besides, as per Section 195(b)(i) of the Cr. P. C. a proceeding Under Section 199, IPC can be initiated by a Court following the procedure Under Section 140 of Cr. P. C. and is not maintainable at the instance of a private party.

Mr. S. S. Rao, learned counsel for the opp. party, however, contends that in rare case, the High Court should exercise its power to quash an order taking cognizance of an offence and no detailed

scanning of evidence is called upon in law at this stage to find out if the cognizance was rightly taken. Besides a proceeding Under Section 199 IPC cannot be initiated at the instance of a private person, is not a supportable proposition in law. He further contends that since civil proceeding and criminal proceeding can be simultaneously continued in respect of the same allegation, there is no reason why this criminal proceeding which is initiated against the petitioners be quashed.

4. Section 199 of the Indian Penal Code reads as follows :

"Section 199 : False statement made in declaration which is by law receivable as evidence;

Whoever, in any declaration made or subscribed by him, which declaration any. Court of justice or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence."

Whether particular declaration made or subscribed by him amounts to an offence Under Section 199 IPC, depends upon the facts of each case.

Before a person can be punished Under Section 199 IPC, it has to be proved inter alia, that that the false statement made 'touched any point material to the object for which the declaration is made.' If by giving a false date in the award thereby antedating the same was not corruptly used to the disadvantage of the present opp. party, it could not be said that an offence Under Section 199 IPC was committed. The view finds support from a decision of the Supreme Court reported in AIR 1969 SC 7 (Jotish Chandra Chaudhury v. State of Bihar). In that case the date of birth of a child' was given as June 9, 1954 instead of December 12, 1951 and as far as the appeal pending before the learned Single Judge was concerned, it was not disputed that this change did not make any difference to the decision of the question of impleading the minor son as a party or caused any bar on the question as to whether the suit is maintainable or not and the Apex Court said that for an allegation Under Section 199 IPC false statement or declaration need be proved touching any point material to the object for which the declaration was made.

5. Under the Arbitration Act Section 5 provides that the authority of an appointed arbitrator or umpire shall not be revocable except with the leave of the Court, unless a contrary intention is expressed in the agreement. In this view of the matter even if a notice had been received by the Arbitrators from the opposite party alone, the Arbitrators are not functus officio to continue with the award thereafter until validly the authority has been withdrawn. There could be no presumption mat with the intention to utilise the document to the disadvantage of the party, the Arbitrators had antedated the document. As already held by this Court in the case of Pitambar Puhani and Anr. v. State, reported in 73(1992) CLT 70 thus :

"Taking cognizance means judicial application of mind by the Magistrate to the facts mentioned in the complaint with a view to taking further action. What Section 190 contemplates is that the Magistrate takes cognizance once he makes himself fully conscious and aware of the allegations

made in the complaint and decides to examine or test the validity of the said allegations. (See : Tula Ram v. Kishore Singh, AIR 1977 SC 240'). Taking cognizance is the threshold act of judicial proceeding relating to an offence. " xx xx "

In paragraph-6 of the said judgment, the Court further held as follows :

"Since the act of taking cognizance is not a matter of empty formality, a revisional Court can interfere with an order of the Magistrate to issue process (a) where the allegations made in the complaint or statements of witnesses recorded in support of the same taken on the face value do not make out any case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused, (b) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused : (c) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible : and (d) where the complaint suffers from fundamental legal defects, such as, want of sanction or absence of complaint by legally competent authority and the like."

Sections 191 and 199 of the Indian Penal Code are two distinct sections. If any false statement is made in any declaration it does not attract the provisions of Section 199 IPC and that false statement only will constitute an offence Under Section 191 IPC. Where it is made touching any point material to the object for which the declaration was made, that would constitute an offence Under Section 199 IPC. In view of Section 5 of the Arbitration Act, the notice by opposite party would not disentitle the Arbitrators to proceed further in the Arbitration proceeding. It was therefore, unnecessary to antedate the award. It could have a bearing if the Arbitrators had no jurisdiction to proceed in law. after receiving notice from opposite party and antedating the award was intended to fraudulently utilise the same as evidence in favour of the present petitioner No. 1 to the detriment of the opposite party. As it had already been held by this Court that taking cognizance is not a matter of empty formality, but application of judicial mind to it, there is nothing; to satisfy this Court that there was any prima facie case made out on the facts of the case for taking cognizance Under Section 199 IPC.

6. It is also not disputed that a civil suit has been filed bearing Title Suit No. 1 of 1988 in the Court of the Subordinate Judge, Parlakhemundi for declaration that the award was not binding on the opposite party as it was passed after notice revoking the authority was delivered on the Arbitrator and was antedated. The fact that the said Title Suit bearing No. 1 of 1988, has been subjudice between the parties was not disputed. In a case reported in AIR 1979 SC 850 (Trilok Singh and Ors. v. Satya Dao Tripathi), the Apex Court struck down a criminal proceeding, the short facts of which case are that a hire- purchase agreement was entered into between the respondent and the appellant Finance Corporation. The loan was payable in monthly instalments and according to the agreement, on default of any instalment the financier had the right to terminate the hire-purchase agreement even without notice and seize the truck. The complainant's case was that he had only signed a blank form. On default of the third instalment, the truck was forcibly seized and removed by the appellant. The respondent had filed a complaint against the appellants in this connection for certain offence. After enquiry the Magistrate directed the issue of summons. But on an application of the

appellants Under Section 482 Cr. P. C, the Apex Court held that initiation of that proceeding was clearly an abuse of the process of the Court. It was not a case where any process ought to have been directed to be issued against the accused (appellants). On the well-settled principles of law it was a very suitable case where the criminal proceeding ought to have been quashed by the High Court in exercise of its inherent power. The dispute raised by the respondent was purely of a civil nature even assuming the facts stated by him to be substantially correct. Keeping in view the decision of the Supreme Court as stated above, I also come to hold that here the dispute raised between the parties is of a purely civil nature and the continuance of a criminal proceeding would be an abuse of the process of Court and be quashed on this score alone. In this view of the matter, I do not like to go to the third question whether the complaint petition is maintainable at the instance of this opposite party without any motion being made by the Court below in terms of Section 195(b)(i) read with Section 190 Cr. P. C.

7. In the result, the criminal revision is allowed, the impugned order dated 28-3-1988 taking cognizance Under Section 199 read with Section 34 of the Indian Penal Code passed by the Sub-Divisional Judicial Magistrate, Paralakhemundi in ICC No. 17 of 1988 is quashed.