

PATNA HIGH COURT

Ramkisto Sahu

Vs

State of Bihar

Criminal Misc. No. 223 and Cri. Revn. No.575 of 1951

(Narayan, J.)

04.09.1951

JUDGMENT

Narayan, J.

1. These two applications have been heard together. The application which has been registered as Criminal Miscellaneous No. 223 of 1951 is for the transfer of a case under Section 211 of the Indian Penal Code, pending in the Court of Mr. J.P. Singh, Subdivisional Magistrate of Khunti, from his file to the file of any other competent Magistrate, and the application which has been registered as Criminal Revision No. 575 of 1951 is an application for directing a further enquiry into the case on account of the dismissal of which the petitioner is being prosecuted under Section 211 of the Indian Penal Code.

2. On the 8th of May, 1950, the petitioner lodged a first information report at the Tamar police station in which certain very serious allegations were made by him against the Inspector of Amins, deputed for the demarcation of forests, a Forest Guard and certain constables of the Armed Force. The occurrence was alleged to have taken place on that very day at 9 A.M. and the first information report was lodged at 4 P. M. The allegations were that the above mentioned persons went to the shop or the house of the complainant and asked him to supply flour, sugar and ghee. Neither the complainant nor his brother Gangadhar Sahu, who happened to be at the shop at the time, was prepared to supply them anything until the price was paid : and when Gangadhar Sahu demanded the price, he was assaulted and dragged out of the shop. The applicant, on seeing this, went inside his house and from there saw his brother Sadhu Sahu and a co-villager of his named Dina Sahu being assaulted by the constables and the Inspector. The constables kept a watch on his house, but he managed to get out after scaling the walls and ran to the house of one Raghunandan Sahu. At Raghunandan Sahu's place he learnt from Sadhu Sahu and Dina Sahu that the Inspector and the members of the Armed Force had assaulted them and had extorted a sum of Rs. 5/- from each of them. The village chaukidar was then called and informed about the occurrence, and the petitioner started for the police station where he lodged

the first information report. The police took up the investigation of the case, but they submitted a final report 'false' and recommended the prosecution of the complainant under Section 211 of the Indian Penal Code. The learned Subdivisional Magistrate, therefore held a judicial enquiry and after the enquiry agreed with the police report that the case was maliciously false. The report of the learned magistrate is dated the 26th of August, 1950 and on the 18th of September, 1950, the petitioner filed a protest petition on which the learned magistrate passed the following order :

"Perused the petition of Ramkisto Sahu filed on 18-9-50. I went through the connected records. I have already made an exhaustive enquiry and written a report. I have passed order in C.R. Case No. 120 of 1950 in which I have held the case to be maliciously false and ordered for prosecution of the informant under Section 211, Indian Penal Code. There is no ground to change my order. The petition will be filed."

The case under Section 211 of the Indian Penal Code is in the file of the same learned magistrate, and the petitioner contends that in view of the report submitted by this learned magistrate he should not have kept this case in his own file. An application in revision for directing further enquiry has been filed before the learned Judicial Commissioner of Chotanagpur and it was heard by the Additional Judicial Commissioner, who dismissed the application with the observation that this was not a fit case for directing further enquiry.

3. In my opinion, this is a fit case in which further enquiry ought to be ordered and it was very improper on the part of the learned Sub-divisional Magistrate to have kept the case under Section 211 of the Indian Penal Code in his own file after he had made such strong observations against the complainant in his report. Even the learned Additional Judicial Commissioner has observed as follows :

1. "Though the learned Magistrate could have ordered the prosecution of the complainant on the report itself of the police, he took pains to examine witnesses and has written out a detailed order extending over 12 pages showing that the police report recommending his prosecution under Section 211, Indian Penal Code, was quite justified. It is immaterial what liable is put on this enquiry. At best it can be said that he did more than he was required to do under the law. But on that ground no fault can be found with his order agreeing with the police report."
2. "The prosecution witnesses no doubt support the case for the complainant but P. W. 8 Chaitan Munda the chowkidar of the village does not support the prosecution case."
3. "The only thing that can be said in favour of the complainant's case is that the story set up by him is so fantastic that nobody could have invented it. True it is difficult to think that the complainant will trump up such a false story against the armed constables."

Even though the learned Additional Judicial Commissioner thought that such a story could not be invented by the complainant, he was very much influenced by the learned Sub-divisional

Magistrate's observation in his judgment that the complainant was taking a leading part in obstructing the demarcation of the forest and that the present case arose because of the alleged obstruction to the demarcation of the forest. I am afraid the learned Additional Judicial Commissioner as well as the learned Sub-divisional Magistrate appear to be of the view that even though a 'prima facie' case had been made out by the complainant, a detailed enquiry was not unjustified and that the findings arrived at after the detailed enquiry were conclusive of the case and conclusive of it against the complainant. This Court has, more than once, expressed its view that an enquiry under Section 202 of the Code of Criminal Procedure should not be converted into a full-dress trial. In a recent case in '*Radha Kishun Sao v. S.K. Misra*', Das, J., observed as follows :

"Assuming that the accused person makes certain statements in his defense, I do not see how the learned Sub-divisional Magistrate can hold that the witnesses who support the petition of complaint should be disbelieved, unless the learned Sub-divisional Magistrate is prepared to convert his enquiry into a full-dress trial. If the accused person is not to be permitted to cross-examine the witnesses who support the petition of complaint, their evidence cannot be thrown out merely on the statements of the accused. Their evidence can be thrown out only if the enquiry is converted into a trial; but that is a practice which has been condemned by this Court on more than one occasion."

With this view I find myself in respectful agreement. That this complainant had almost made out a 'prima facie' case appears from the report itself. On behalf of the complainant, 13 witnesses had been examined and their statements indicated that the members of the Armed Force under the control of the Inspector of Amins had misbehaved with other persons as well. One Bhunesar Sahu son of Sita Sahu stated that Rs. 150/- had been extorted from his father and Sita Sahu himself came forward to say that he had to pay Rs. 150/-. The evidence of so many witnesses was rejected by the learned Sub-divisional Magistrate on the ground that they did not appear to him to be independent witnesses. The following observation in the report of the learned magistrate shows that quite sufficient evidence had been adduced before him for proving some of the important allegations made by the complainant :

"These witnesses have tried to support the occurrence, but their evidence has to be considered very carefully because none of them appears to be independent witness. I will discuss the relevant portion of their evidence later on."

The discussion which has followed this observation undoubtedly indicates that the learned magistrate had treated the enquiry as a trial and dealt with the case as if he had to pronounce finally on the truth or otherwise of the allegations made by the complainant. Certainly some injury marks were found on the persons of the complainant and others and the learned magistrate says that though from "the case diary it appears that Ramkisto Sah and others had slight marks of injuries, the doctor has not been cited as a witness and the injuries are not serious." This sort of

approach to the case at the enquiry stage cannot be regarded as absolutely fair and the way in which the learned Sub-divisional Magistrate has discarded the evidence of some of the witnesses is also open to criticism. It is very important that not only this complainant but certain other persons as well had to complain about the high-handed action of the Inspector of Amins and the members of the Armed Force under him. Undoubtedly, if the complainant was obstructing the demarcation of the forests, there was some motive for him to bring forward certain false accusations against the Inspector and the men under him. But if this Inspector and the constables were not behaving properly with the people of the locality and were not even inclined to pay the price of the food-stuff and the other articles required by them, then certainly there was the motive for them to invent a false story of obstruction in their self-defence. The final report which the police had submitted in this case, did not carry much weight. After all, certain members of the Armed Force were involved in this case and what is known as "professional bias" as a thing which we are not unfamiliar. I should like to quote the following passage from a well-known judgment of Straight, C.J., in '*Queen Empress v. Babu Lal*²',

"What the Courts in dealing with such matters ought to do is to bear in mind that police evidence in this country necessarily partakes more or less of a, so to speak, professional bias, that it is frequently, if not invariably, highly coloured, and that it requires to be received and weighed with much caution and discrimination."

A Bench of the Calcutta High Court did not approve of an enquiry into a complaint against a Sub-Inspector by Superintendent of Police, as would appear from the following observation in the judgment of that Court in '*Haladhar Bhumij v. Sub-Inspector of Police, Hura Outpost*³',

"Further, when these charges were laid against a Sub-Inspector, it seems to us that the enquiry into the truth of these charges would have been better carried out if entrusted to a Deputy Magistrate than to the District Superintendent of Police, who, as head of the Police, might not be in as impartial a position for discovering the truth, as an officer, not connected with the Police."

The final report of the police in this case was, therefore, not of much value, and it could not be acted upon without hesitation; and fortunately even the learned Sub-divisional Magistrate did not at once act upon it. But the error which the learned Sub-divisional Magistrate seems to have committed is this that he has dealt with the matter as if he was hearing a regular case. He starts with the observation that he has to see how far a 'prima facie' case has been made out, but he brings forward some reason or other for discarding the evidence of each of the prosecution witnesses. He even examined some witnesses as Court witnesses, and appears to have been influenced by the evidence of Mr. Minz, a Deputy Magistrate. Mr. Minz had been deputed to see that there was no breach of peace at the time of the demarcation of the forests and the learned magistrate attaches importance to his evidence, though he observes that there might have been ill-feeling between the forest staff and the complainant Ramkisto Sahu. If there was ill-feeling

between the forest staff and the complainant, we should not forget that Mr. Minz was there as a person connected with the forest staff. Even Mr. Minz appears to have stated before the learned Sub-divisional Magistrate that he had asked the Havildar to send some constables to call Ramkisto Sahu - the expression "some constables" being important. Mr. Minz could not tell the learned

Sub-divisional Magistrate how many constables were actually sent, but he seemed sure that at least three members of the Armed Force must have kept themselves engaged in cooking. It is very significant that not one constable but several constables had to be sent for calling Ramkisto Sahu. It further appears from the report that the Inspector of Amins had gone to the house of Ganga Sahu. Thus, even in the report of the learned magistrate there are some indications of a 'prima facie' case having been made out by the complainant. A tribunal whose business it is to administer criminal justice has to be alert and watchful to see that it is not deceived by false testimony or false pleas and the administration of justice should always be conducted in a manner which may preserve the people's confidence in it. If an officer conducting an enquiry is found to overdo things, that may reasonably lead to an apprehension that he had started with certain pre-conceived notions. It will be very sad if an impression is created that a man subjected to 'Zulum' by police men and responsible officer can have no redress in a law Court, especially when the framers of the Indian Statute Law were perfectly alive to the fact that the powers of the police are sometimes abused for purposes of extortion and oppression. I would like to quote the following passage from the judgment of Mahmood, J., in the case of 'Babu Lal', 6 All 509, referred to above, though this observation was made in connection with a case in which the main question related to the admissibility of a confession : (page 523).

"That the extortion of confessions by torture continued to be a rampant evil in India is further shown by the fact that the Legislature, in framing the Indian Penal Code (which became law on the 16th October, 1860), provided two special sections (330 and 331), directed especially against such mal-practices; and it is very significant that out of the four illustrations appended to Section 330, two contemplate torture by a police officer, one describes torture to obtain a confession, and the other relates to torture for procuring discovery of stolen property."

I should not be understood to say that I feel satisfied that there is absolute truth in the allegations that have been made by the complainant. What I mean is this that the police report was not fit to be acted upon and it was rightly not acted upon by the learned Sub-divisional Magistrate, and that the error which the learned Sub-divisional Magistrate committed was that he conducted this enquiry as if it was a full-dress trial - a procedure which has been condemned by this Court more than once. The learned Sub-divisional Magistrate should have realised what was his province and scope at that stage and he should have applied his mind to the materials which were before him, with a view to judging how far a 'prima facie' case had been made out. Judged by this standard, the report of the learned Sub-divisional Magistrate cannot be regarded as satisfactory and fair and I am constrained to direct a further enquiry into the matter.

4. The learned Counsel appearing for the State could not support the view that an elaborate enquiry of such a nature at the initial stage was justified and he was inclined to think that the report of the learned Sub-divisional Magistrate is really a report on the question as to whether a prosecution under Section 211 of the Indian Penal Code would be justified. But, in my opinion, the learned State Counsel was wrong in making this submission because what I find is that on the very day on which the learned Sub-divisional Magistrate passed the order that he would hold a judicial enquiry, he passed the following order on the report recommending the prosecution of the applicant under Section 211 of the Indian Penal Code :

"Put up after the disposal of the final report.
Sd. J.P. Singh, 3-6-50."

It is, therefore, obvious that this elaborate enquiry was made with regard to the allegations which had been made by the complainant in his first information report. It is true that though the report is dated the 26th of August, 1950, the protest petition by the complainant could not be filed before the 18th of September, 1950. But this delay does not appear to be material in this case because, unfortunately, the learned Sub-divisional Magistrate took more than two and a half months in finishing this enquiry. The complainant found himself almost in the same position as a complainant who has to adduce evidence at a regular trial, and the matter dragged on till the 26th of August, 1950. The learned Counsel for the applicant submitted that after such a report by the Sub-divisional Magistrate lawyers had to be consulted and the complainant had to decide after a careful deliberation if it was worthwhile pursuing the matter. I think, in the circumstances of the case, this is to be regarded as a satisfactory explanation for the delay that was made in filing the protest petition against the enquiry report.

5. In the result, I would allow both the applications and direct that a further enquiry into the complaint be made either by the Deputy Commissioner or by any other Magistrate Subordinate to him and that the case under Section 211 of the Indian Penal Code be transferred from the file of the learned Sub-divisional Magistrate to the file of any other Magistrate, preferably a Munsif-Magistrate, for disposal according to law.

Order accordingly.

Cases Referred.

¹ AIR 1949 Pat 36 at p. 39

²⁶ All 509 at p. 548

³⁹ Cal WN 199 at p. 201