

(1991) 08 OHC CK 0031

Orissa High Court

Case No: Criminal Miscellaneous Case No. 439 of 1988

Santosh Kumar
Sundaraka

APPELLANT

Vs

Orissa State Civil
Supplies Corporation

RESPONDENT

Date of Decision: Aug. 23, 1991

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 227
- Penal Code, 1860 (IPC) - Section 409, 420

Hon'ble Judges: A. Pasayat, J

Bench: Single Bench

Advocate: Pradipta Mohanty, for the Appellant; R.N. Panigrahi and D. Panigrahi, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

A. Pasayat, J.

Petitioner calls in question legality of the action of the learned Sub-divisional Judicial Magistrate, Nayagarh (in short "SDJM") taking cognizance u/s 409 of the Indian Penal Code, 1860 (in short "IPC").

2. A complaint was filed by the present opposite party, alleging that there was misappropriation of stocks entrusted to the petitioner. The District Manager of the opposite party as complainant instituted I.C.C. case No. 31 of 1988, on the allegation that on 19-2-1986 the stock position of the petitioner was verified and huge shortages were found and the stock position was audited by members of the audit party and from the report submitted it was found that there was misappropriation of huge quantities of several edibles. The value of the articles misappropriated was indicated to be more than Rs. 8 lakhs.

3. Main plank of the petitioner's argument is that the complaint was lodged as a counterblast to a dispute raised by the petitioner, and a demand made by him for payment of some amount due to him. It is also submitted that disputes are pending before various authorities relating to entitlement of the petitioner, and the allegations made in this case are of civil nature. Even if the allegations are taken on their face value they do not make out an offence u/s 409, IPC. When disputes are pending, the complaint filed and cognizance taken amounted to a sheer abuse of the process of Court.

4. At the stage of cognizance, the Magistrate is required to see if a prima facie offence is made out. He is not required to make an elaborate analysis of the materials, and/or to see possibility of conviction or acquittal. The law on the point has been succinctly stated in [Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others](#), . Further the scope for interference with an order taking cognizance, when the prosecution is at the initial stage, is very limited, and has to be applied rarely with circumspection only when the uncontroverted allegations do not establish the offence. There may be certain circumstances where it would be predominantly a civil wrong, and may or may not amount to an offence. The nature of dispute may involve several consequences; but it would not be desirable to come to a definite conclusion that only a civil wrong is involved. During the course of trial and even at the stage of framing charge, it is open to an accused to show that the necessary ingredients of the offence are not made out. In such a case, the Court is not powerless and exercising power u/s 227 of the Code of Criminal Procedure, 1973 (in short "the Code") may discharge the accused. At the stage of taking cognizance, the accused has no role to play. The Magistrate is concerned with the question whether there exists material to show prima facie commission of an offence. Cognizance is taken of the offence and not of the accused, and therefore, during trial if any material comes to the notice of the Court that in reality it was a civil wrong and there was no criminal aberration, at that stage the Magistrate can interfere. While dealing with a case u/s 420, IPC, similar view was expressed by this Court in (1989) 2 OCR 526 : Keshab Chandra Pradhan v. Kishore Chandra Mishra and in (1989) 81 OJD 8 (Criminal) : Sagarmull Parekh v. Gangaram Chhapolia.

5. In that background, I do not find this to be a fit case, where interference is called for. My non-interference should not be construed to be expression of any opinion about merits of the case.

The criminal misc. case is disposed of.