



section 109 of the Indian Penal Code and also in dismissing the complaint petition.

2. The appellant filed an application under section 378(4) of Cr.P.C. seeking for special leave to prefer an appeal against the aforesaid impugned order dated 13.09.1984 vide Criminal Misc. Case No.796 of 1984 and special leave was granted as per order dated 18.01.1993, whereafter this appeal was preferred which was admitted on 11.03.1993.

3. None appears on behalf of the appellant so also on behalf of the respondents.

4. Mr. Dipak Ranjan Parida, learned Additional Standing Counsel in absence of the learned counsel for the appellant as well as learned counsel for the respondents placed the complaint petition, the statements of the witnesses and the impugned order.

5. On perusal of the order sheet of this Court dated 11.10.1993 and the consequential order dated 05.04.1994, it reveals that this appeal has been dismissed as against respondents nos.9 to 12.

6. The appellant Lalit Mohan Patnaik is the complainant in I.C.C. Case No.74 of 1984, which was filed in the Court of learned S.D.J.M., Khurda. In the said complaint petition, it is alleged that Satyabadi Pattnaik and Trailokyanath Pattnaik are

two brothers and they were separated by metes and bounds since long and their possession was also separately recorded in the C.S. R.O.R. The residential rooms of the appellant in village Anda were in his exclusive physical possession, where all the properties given in the schedule of the complaint petition were kept under his possession. The appellant was serving as an Art Instructor under the State Institute for Rural Development at Bhubaneswar and was staying at Bhubaneswar with his wife whereas his mother and sister's son Atulya Kumar Patnaik were residing in the village house. On 06.06.1984 the appellant got information that the respondents entered inside his house and removed all the movable properties worth of Rs.50,595/- (rupees fifty thousand five hundred ninety five) from his house by force and immediately thereafter, he came to the village and ascertained that on 05.06.1984 after sunset, the respondents came to his village in three jeeps and got down in front of his house and knocked at his door. When his sister's son Atulya Kumar Patnaik opened the door, the respondents, namely, Sadasiba Mahapatra, Rabindranath Mishra, Debidutta Mohanty and Basant Kumar Panda told him that they had come to attach the movable properties from the house of the appellant. Atulya Kumar Patnaik told them that the owner of the house being absent and he is at Bhubaneswar, he would not allow the

attachment and removal of properties from the house. At this, Atulya Kumar Patnaik was forcibly dragged by the respondents to the village road and under their orders, respondent Bhagaban Mohanty, S.I. of Police kept him under wrongful restraint and confinement through the help of A.P.R. constables whose names were not known to him. Thereafter, the respondents nos.1 to 9 along with twenty other persons, who were armed with lathis, forcibly entered inside the house of the appellant. When the mother of the appellant and others cried out loudly in fear against the illegal action of the accused persons, they were abused in filthy language and were threatened with assault and were also driven out of the house. Thereafter, the respondents removed all the valuable properties as per the list given in the schedule of the complaint petition by breaking open his trunks, which were five in number, almirah and locks of the rooms. While removing the articles from the almirah, the cups, plates and other articles of China clay and glasses were also broken to pieces. They put those articles in a gunny bag and removed the same. The pad locks of the trunks and of the rooms were broken by the accused persons and those were also taken away. The accused persons also removed the papers and documents regarding the landed properties, the certificates and five almirah containing photographs besides the properties as given in the

list. It is the case of the appellant that the respondents had no right or authority to enter inside his house and to forcibly remove all the valuable properties in his absence. When on hearing the alarm raised by the mother of the appellant and Atulya Kumar Patnaik, the villagers gathered near his house and asked the reason for such highhanded action of the respondents, they were scared away by A.P.R. forces and threatened to be assaulted. The respondents namely Sadasiba Mohapatra, Chandrasekhar Tripathy, Debudutta Mohanty and some others told them that since the appellant defaulted in making payment of the dues of the co-operative societies, his properties were being attached for satisfaction of the loan dues.

It is the further case of the appellant that he had not incurred any loan from the co-operative societies nor he was a defaulter nor any certificate proceeding or E.P. case had been initiated against him for recovery of any outstanding loan amount. Hence, the forcible and wrongful entry of the respondents inside his house and forcibly removing all his valuables as per the list keeping his sister's son under wrongful restraint and fear of assault is highly illegal and done with malafide intention to make personal gains of the respondents. On getting information, the appellant came to the village on the next day in the afternoon and ascertained the facts from the

inmates of his house and other villagers and went to Khurda police station on 07.06.1984 to lodge the F.I.R., but the officer in charge of the police station did not accept the F.I.R. and therefore, the appellant sent the copies of the F.I.R. to the Superintendent of Police, Puri; Collector, Puri; Registrar and Deputy Registrar of the Co-operative Societies, Bhubaneswar and Puri respectively and the Director General of Police, Orissa, Cuttack and other public authorities for redressal of his grievance and for return of his articles by registered post. Since no action was taken, he filed the complaint petition.

7. After filing of the complaint petition, the initial statement of the complainant was recorded and inquiry contemplated under section 202 of Cr.P.C. was conducted and during course of which, complainant examined five witnesses namely P.W.1 Minaketan Misra, P.W.2 Indrajit Baral, P.W.3 Atulya Kr. Patnaik, who is the nephew of the appellant, P.W.4 Rajkishore Baliarsingh and P.W.5 Natabar Das.

After the conclusion of the inquiry, learned S.D.J.M., passed the impugned order which is as follows:-

“Perused the complaint petition, initial statement and statement of four witnesses examined on behalf of the complainant under section 202 Cr.P.C. The complaint petition as well as the initial statement of the complainant Lalit Mohan

Patnaik reveals that on the alleged date and time of occurrence while he was at the place of his service at Bhubaneswar and his own mother and nephew Atulya Kumar Patnaik were present in his house, accused persons came to his house and informed his nephew to remove his movables in connection with an Execution Case. The same was objected by Atulya but the accused persons being armed with lathis forcibly entered inside his house and removed different articles which according to him, the accused persons committed dacoity in his house.

The statement of P.W.1 reveals that in his presence the accused persons removed movables from the house of the complainant in his absence. According to him, the accused persons had nothing in their hands and they attached the properties of the complainant without applying force and causing hurt to his family members. The version of P.W.2 supports the case of the complainant, but according to him the accused persons were armed with lathis and forcibly removed the movables of the complainant. His evidence also reveals that the accused persons neither threatened the mother, nephew nor assaulted them. He has also stated that he has not seen any Bank employees, Magistrate and A.P.R. force committing dacoity in the house of an innocent person. P.W.3, the nephew of the complainant has supported the

version of the complainant in toto. According to him, the accused persons committed dacoity in the house of the complainant. Similarly, P.W.4 has supported the case of the complainant and has stated that the accused persons committed dacoity in the house of the complainant, but has stated that he has not seen any dacoity in the evening in presence of Magistrate, Police Officers and A.P.R. force.

Therefore, such statement of prosecution witnesses and the facts stated in the complaint petition, no human being in this world can conceive for a moment that the responsible Bank officers can commit dacoity in the evening in presence of villagers of Anda in presence of one Magistrate, one Police Officer and A.P.R. force. Besides that the complaint petition as well as the statement of the complainant reveals that the alleged occurrence took place on 05.06.1984, but the complainant has come to the Court for redress only on 26.06.1984. The complainant has stated in his initial statement that on the next day morning he went to the police, but police refused to accept his F.I.R. No doubt, if police had refused to accept his F.I.R., certainly the complainant should have come to Court for redress immediately on the same day or at least on 7<sup>th</sup> of June. But coming to Court after a long lapse of 21 days, was enough for the complainant to concoct a story of this nature

against responsible Bank Officer as well as the responsible Government servants like that of accused nos.10, 11 and 13.

The sum total of my above discussion does not inspire any confidence in my mind that any offence has been committed by the accused persons under Indian Penal Code. In the worst the statement of the witnesses for the complainant reveals that accused nos.10, 11 and the A.P.R. force were at the spot being government servants in discharging of their legal duties. As such sanction to prosecute them is necessary from the State Government and as no sanction has been obtained from the State Government by the complainant, the present complaint is also not maintainable.

Summing up the sum-total of the facts and law involved in this case, I find that there is no material before me to take cognizance against the accused persons and as such the petition for complaint stands dismissed."

8. Section 203 of Cr.P.C. deals with the dismissal of the complaint, in which it is stated that if, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202 of Cr.P.C., the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the

complaint, and in every such case he shall briefly record his reasons for so doing.

A Magistrate may dismiss the complaint under section 203 of Cr.P.C. on three grounds. In the first place, if he, upon the statements made by the complainant and his witnesses, reduced to writing under section 200 of Cr.P.C., finds that no offence has been committed; in the second place, if he distrusts the complainant and his witnesses' statements; and in the third place, if he conducts an inquiry or direct for investigation under section 202 of Cr.P.C. and considering the result of the inquiry or investigation coupled with the statements of the complainant and his witnesses, he is not satisfied that there is sufficient ground for proceeding against the accused, the Magistrate may dismiss the complaint. The words "sufficient ground" used in section 203 of Cr.P.C. mean the satisfaction of the Magistrate that a prima facie case is made out against the person sought to be summoned as accused. It does not mean sufficient ground for the purpose of conviction. The determination of sufficient ground for conviction or acquittal comes only at the end of the trial and not when Court considers whether process is to be issued or the complaint petition is to be dismissed. Section 203 of Cr.P.C. is not a regular stage for adjudicating the truth but where existence of prima facie case is

to be looked into. The test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. The Court cannot be utilized for any oblique purpose. That is the reason why the Court has been given ample power to dismiss the complaint petition at the threshold if it finds lack of sufficient ground for proceeding.

In section 203 of Cr.P.C., the phrase 'if any' is included within brackets. The reason is that when the public servant acting or purporting to act in the discharge of his official duties or a Court makes the complaint in writing, there may not be statements of the complainant and the witnesses on oath in view of the proviso to section 200 of Cr.P.C. but only the statements on the complaint. In such cases, there may not also be any inquiry or investigation under section 202 of Cr.P.C. Similarly a Magistrate is not bound to examine the witnesses cited by the complainant in his complaint petition. The inquiry or investigation under section 202 of Cr.P.C. is discretionary one

and it can be so conducted or directed if the Magistrate thinks fit to postpone the issue of process.

The Magistrate can dismiss the complaint under section 203 of Cr.P.C., inter alia, on any of the following grounds:-

- (a) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused;
- (b) The complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
- (c) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can come to the conclusion that there is sufficient ground for proceeding against the accused;
- (d) Where the complaint suffers from fundamental illegal effects; and
- (e) Where the complaint is not by competent authority only empowered to make a complaint.

**(Ref:- Vol.74 (1992) Cuttack Law Times 136, Chudamani Sahoo Vrs. Bhojaraj Behera)**

In case of **M/s. Rourkela Construction Private Ltd. -Vrs.- Ravindra Kumar Goyal reported in (1992)5 Orissa Criminal Reports 410**, it is held that under section 203

of the Cr.P.C., the Magistrate gets jurisdiction to dismiss a complaint, if on perusal of the complaint and the evidence recorded U/s. 202, he finds that the essential ingredients of the offence alleged are absent or that the dispute is only of a civil nature or that there are such patent absurdities in the complaint or in the evidence that it would be a wastage of time to proceed further.

The section clearly indicates that at the time of dismissing the complaint petition, the Magistrate shall briefly record his reasons for so doing. Thus, the recording of reasons is mandatory. It may not be an elaborate one but it should reflect the minimum reasons for passing such an order. Reasons are live links between the minds of the decision maker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudicating the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone

against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. **(Ref: 2004 Supreme Court Cases (Criminal) 341, State of Punjab -Vrs.- Bhag Singh).**

In case of **Chandra Deo Singh -Vrs.- Prokash Chandra Bose reported in A.I.R. 1963 S.C. 1430**, it is held that if the Magistrate has dismissed the complaint without giving reasons, the error is of a kind which goes to the root of the matter. Absence of the reasons would make the order a nullity. The complainant is entitled to know why his complaint has been dismissed with a view to consider an approach to a revisional Court. Being kept in ignorance of the reasons clearly prejudices his right to move the revisional Court.

Section 203 Cr.P.C. consists of two parts, the first part lays down the materials which the Magistrate must consider, and the second part states that if after considering those materials, there is no sufficient ground for proceeding; the Magistrate may dismiss the complaint. While exercising such power under section 203 of the Code, it is incumbent upon the Magistrate to reflect in his order the basis for arriving at the

conclusion that there are no sufficient grounds to proceed with the complaint case. While arriving at his judgment, the Magistrate is not fettered in any way except by judicial considerations. He is not bound to accept what the inquiring officer says, nor is he precluded from accepting a plea; provided always that there are satisfactory and reliable material on which he can base his judgment as to whether there is sufficient ground for proceeding on the complaint or not. If the Magistrate has not misdirected himself as to the scope of inquiry under section 202 of Cr.P.C. and has applied his mind judicially to the materials on record, it would be erroneous in law to hold that he should not consider or discuss the materials available and the statements recorded. A Magistrate is empowered to hold an inquiry into a complaint as to commission of certain offence in order to ascertain whether there was sufficient foundation for it to issue process against the person or persons complained against and such order under Section 203 Cr.P.C. should be a speaking one. In other words, when a Magistrate intends to dismiss a complaint petition, he has to give reasons. **(Ref: 2013 (I) Orissa Law Reviews 234, Dhruva Charan Behera -Vrs.- State of Orissa).**

9. In view of the law laid down and after carefully going through the impugned order and the materials available on

record, I do not find any illegality or irregularity or perversity in the order. Moreover, a revision petition is maintainable against an order dismissing the complaint under section 203 of Cr.P.C. Special leave to prefer an appeal is sought for under section 378(4) of Cr.P.C. against an order of acquittal in any case instituted upon a complaint and dismissal of a complaint is not an acquittal as per explanation provided under section 300 of Cr.P.C.

The dismissal of complaint by the Magistrate under section 203 of Cr.P.C. although it is at preliminary stage nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed crime. Once a challenge is laid to such order at the instance of a complainant in a revision petition before the High Court or Sessions Judge, by virtue of section 401 (2) of the Code, the suspects get right of hearing before revisional Court although such order was passed without their participation. The right given to "accused" or "the other person" under section 401 (2) of being heard before the revisional Court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of complainant challenging the

order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of express provision contained in section 401 (2) of the Code. The stage is not important whether it is pre process stage or post process stage. In other words, where complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401 (2) of the Code.

For the reasons afore-stated, I am not inclined to interfere with the impugned order.

Accordingly, the Criminal Appeal stands dismissed.

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S.K. Sahoo, J.