

b.

CrI.A.No. 847-849 OF 1997

ITEM No. 101

Court No.10

SECTION IIA

(Part-Heard)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CRIMINAL APPEAL NOS.847-849/1997

S.K. PattnaikAppellant (s)

Versus

Braja Kishore Jothi & Ors.....Respondent (s)
(With office report)

Date : 11/02/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN
HON'BLE DR. JUSTICE B.N. SRIKRISHNA

For Appellant (s)
Mr.B.K. Prasad,Adv.
Mr.V.K. Verma,Adv.

For Respondent (s)
Mr.Gokulananda Mohapatra,Adv.
Mr. Jana Kalyan Das,Adv.

Mr.Shibashish Misra,Adv.
Mr.Kamlendra Mishra,Adv.

UPON hearing counsel the Court made the following
O R D E R

The criminal appeals are disposed of in terms of the signed order.

(SHEETAL DHINGRA) (VEERA VERMA)
COURT MASTER
[Signed order is placed on the file]

COURT MASTER

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos.847-849 OF 1997

S.K. PattnaikAppellant (s)

Versus

Braja Kishore Jothi & Ors.Respondent (s)

O R D E R

The respondents herein filed a criminal complaint against the petitioner and another before the Sub-Divisional Judicial Magistrate, Bhubaneswar alleging that they committed offences under Sections 342, 347, 195, 384, 389 & 385 of the Indian Penal Code (for short the 'IPC'). One of

the respondents and some witnesses were examined and thereafter the learned Magistrate took cognizance of the offences punishable under Sections 384,465 and 109 of the IPC. The petitioner is an inspector of Central Excise and Customs and the co-accused was a Superintendent of Central Excise and Customs.

The facts leading to the filing of the complaint are that the petitioner along with his co-accused conducted a search in the house of one Laxmi Priya Nayak and seized certain primary gold.

Thereafter, these officers summoned the respondents/ complainants who are engaged in the manufacture of gold ornaments. The respondents were asked to produce the G.S.13 register which they were bound to maintain under the provisions of the Gold (Control) Act, 1968. The case of the respondents is that they were unlawfully detained by the petitioner and his co-accused and they extracted confessional statement from them. It is also alleged that the accused asked them to correct the entries in G.S.13 register and the word "gold" was directed to be corrected as "gold ornaments". Respondents alleged that thus the accused committed offences under Sections 384 & 465 of the IPC.

The petitioner accused raised several contentions before the Magistrate and it was alleged that prosecution was not maintainable in view of Section 108 of the Gold (Control) Act, as they had been doing the various acts in good faith as part of their official duties. The said petitioner contended that as the alleged offence had been done in the discharge of his official duties and for prosecution sanction was required under Section 197 of the Cr.P.C. These pleas of the petitioner were not accepted by the learned Magistrate and the petitioner filed a revision before the High Court. The High Court declined to interfere with the order passed by the Magistrate and passed the impugned order holding that for prosecution of the petitioner herein no sanction was required under Section 197 of the Cr.P.C. Against that the present appeal is filed.

We have heard learned counsel appearing for the appellant and also the learned counsel for the respondents. As regards sanction, elaborate arguments were addressed by counsel on either side. We do not find it necessary to consider this question as on other grounds we could dispose of these criminal appeals.

The criminal complaint was filed as early as 1989. The only allegation made against the accused persons is that they compelled the respondents to correct the G.S.13 register thereby committed the offence under Section 465 of the IPC. The respondents could not satisfactorily state as to what was the damage or injury caused to the complainants by the alleged forgery made regarding the entries in G.S.13 register. The respondents could not satisfy us that the allegations in the complaint would be enough to attract the ingredients of the offence under Section 465 IPC. As regards the offence under Section 384 also the respondents could not satisfactorily explain how such an offence would be made out on the basis of the allegations made in the complaint. That apart, there is long delay in pursuing the matter and prima facie the petitioner and his co-accused were discharging their official duties. Even if it is assumed that they transgressed certain limits while discharging their official duty, we do not think that this is a case where this prosecution shall continue even after by lapse of fourteen years. Hence we quash the entire proceedings pursuant to the complaint.

Counsel for the respondents further contended that pursuant to the recovery of primary gold, from the house of Laxmi Priya Nayak, prosecution has been launched against her. We make it clear that she would be at liberty to raise whatever defence available to her and the quashing of these proceedings will not in any way stand in the way of raising any such defences.

The criminal appeals stand disposed of.

.....J.
(K.G. BALAKRISHNAN)

.....J.
(B.N. SRIKRISHNA)

New Delhi,
February 11, 2004