

THE HIGH COURT OF ORISSA : CUTTACK

WPCRL No.332 of 2005

In the matter of application under Articles 226 & 227 of the Constitution of India.

Nityananda Behera ... Petitioner

-Versus-

State of Orissa & others ... Opp. Parties

For petitioner : M/s. R. Mohanty & P.K. Sahoo

For Opp.Party Nos.1 to 4& 7: Additional Standing Counsel

For Opp. Party No.5 : M/s. B. Biswal, D.K. Biswal,
S. Samal & B.R. Biswal

For Opp. Party Nos.6 : None

P R E S E N T :

THE HON'BLE MR. JUSTICE INDRAJIT MAHANTY.

Date of judgment: 25.06.2014

I. Mahanty, J. This writ petition has been filed by the petitioner-
Nityananda Behera, inter alia, with the following prayer:

The petitioner's respectful submission is that this Hon'ble Court may graciously be pleased to consider the facts, circumstances, helplessness of the

petitioner and the malafied intention of the opp. parties to deprive the petitioner from taking over the charge of his stolen Trawler and make it ruined causing irreparable loss to the poor petitioner and it is essential on his part to get back the Trawler after repair and colouring as agreed by both the parties. For which the local Police may kindly be directed to take necessary steps for compliance of the agreement between the petitioner and accused Rabindra Behera;

And to pass an order directing the O.P. No.6 to pay compensation for his act of abatement to cause severe loss to the petitioner by theft of his trawler and to the O.P. No.7 for her deliberate negligence on giving possession of the Trawler and made it damaged causing irreparable loss to his life and livelihood within a stipulated time;

And any other order/orders, direction/directions may kindly be given as this Hon'ble Court deem fit and proper."

2. It is submitted on behalf of the petitioner that the petitioner was working as trawler driver/operator in a trawler known as "MAA ANANDAMAYEE" and was fishing in the Paradeep Port since 1995. It is asserted that the trawler owner, namely, Debasis Choudhuri wanted to sale the trawler and on being approached by one Sampad Swain, the petitioner purchased the same by selling part of his landed property and homestead and by borrowing some amount from close relatives. The petitioner-Nityananda Behera claims to have purchased the said trawler along with one Ramakanta Behera jointly on payment of Rs.3,55,001/- and the sale deed was effected on 23.02.2001. The said sale deed was kept with the Digha Fishermen and Fish Traders Association which was to be handed over to the

petitioner after payment of balance amount. It is stated that out of the sale consideration of Rs.3,55,001/-, a sum of Rs.3,25,001/- was paid on 24.11.2000 and balance Rs.30,000/- was to be paid within dt.20.12.2000. It appears that subsequently the joint purchaser, Ramakanta Behera withdrew his share and was paid his invested amount by the petitioner. An affidavit to that effect was sworn to on 01.08.2001 under Annexure-2. By that event, it is claimed that the petitioner became the sole owner of the trawler "MAA ANANDAMAYEE".

3. After purchasing the trawler, the petitioner claims to have brought the trawler to the harbour and spent about Rs.85,000/- on repairing and colouring the vessel. It appears that on 19.11.2001 the trawler was stolen from the Jetty harbour of Paradeep for which the petitioner lodged F.I.R. before the Paradeep Police Station and since the same was not registered, he had to moved the court of the learned J.M.F.C.(P), Kujang vide Misc. Case No.636 of 2001 with a prayer to direct the police to take necessary action. Pursuant to such a direction, Paradeep P.S. Case No.338 of 2002 came to be registered for offence punishable U/s.341,294,379,506/34 of the I.P.C. After registration of P.S. Case, investigation commenced. It appears that on 22.11.2001 police received information that the trawler was likely to be at Kakatpur. They informed the petitioner to accompany them and

on such it was found that the accused Rabindra Behera, who had absconded, has stolen the trawler. His house was searched by the police and some of the accessories of the concerned trawler were seized. As per the seizure list, the trawler “MAA ANANDAMAYEE” was also seized and some other accused persons were arrested by the police. On the next day, the petitioner was called to Kakatpur Police Station and the I.O. asked the petitioner to come on the next day to take possession of the seized material along with the trawler. On the next day, the petitioner went to Paradeep Police Station despite the assurance of the I.O. Kakatpur Police Station that the trawler would be given to him and was called upon to sign certain documents in blank. He was told by the I.O. that the blank papers are the zimanama which had been filled up by the time of taking possession of the stolen trawler as well as seized materials. It is stated that in spite of repeated visit to the P.S., the petitioner became penniless and was never given delivery of the trawler and seized materials. When the petitioner repeatedly requested the I.O. Kakatpur Police Station as to why possession was not being given, it is stated that he responded by saying that possession had already been given since zimanama had already been signed by the petitioner.

4. It appears that a news paper article in the daily ‘Sambad’ was published on 24.12.2012 containing the news article regarding

recovery of the stolen trawler seized at Kakatpur and contained a false averment that possession had been given to the owner i.e. the present petitioner. The petitioner out of desperation approached the local Panchayat before whom a Panchayatnama was signed on 25.03.2002 in which opposite party No.5, namely, Rabindra Kumar Behera (the accused) agreed to handover the trawler to the petitioner after repairing and colouring the same within 15 days from the date of Panchayatnama/agreement under Annexure-6. In spite of such assurance before the Panchayat, the same was not complied with compelling the petitioner to make various representations to the Chief Minister, the Superintendent of Police etc. but, of no avail.

5. The petitioner had earlier approached this Court in WPCRL No.190 of 2004, wherein this Court passed an order on 05.10.2004 directing the petitioner to move the concerned court under Section 457 Cr.P.C. for release of the seized trawler. Accordingly, the petitioner moved an application under Section 457 Cr.P.C. before the learned J.M.F.C.(P), Kujanga registered as Misc. Case No.3 of 2005 filed on 12.01.2005. The said petition came to be disposed of by the learned J.M.F.C.(P), Kujanga by order dated 01.02.2005 placing reliance on the report of the I.I.C. Paradeep Police Station which disclosed that the seized trawler had been given in zima to the petitioner but the same had not been taken by him and is lying at

Astarang. Though necessary police assistance, as sought for, had been given, the petitioner did not turn up to the police station, though a Havildar was present near the trawler at the village in terms of the direction of the Superintendent of Police, Jagatsinghpur. The order was concluded by recording the undertaking of the I.I.C., Paradeep P.S. that he is ready to give necessary police assistance to the petitioner if he would take back his seized trawler from Astarang and further if the petitioner felt unsafe to take possession of the trawler, the police was also directed to render necessary assistance.

6. In spite of such direction, it is averred that the inaction on the part of the police authority had caused immense financial loss to the petitioner, as a consequence of which his only source of livelihood has been lost.

7. A counter affidavit has been filed on behalf of the then S.I. of Police, Paradeep Police Station reiterating that the above facts and submitted that the petition under Section 457 Cr.P.C. having been allowed, no further direction as prayed for in the writ petition can be granted.

8. In the light of the aforesaid circumstances, this Court is of the considered view that the necessary attention and seriousness that needed to be shown by the police while investigating into the F.I.R. filed by the petitioner is not seen from the record. The

desperate needs of the petitioner, who has invested his life savings in the trawler and is crying for assistance from the police authorities, appear to have gone un-answered. It appears that the trawler had been stolen from Paradeep Jetty and was recovered from Kakatpur and mechanical parts of the trawler were found from the house of accused Rabindra Kumar Behera, who had gone absconding. It is only by the personal efforts of the petitioner that the Panchayat authorities managed to get Rabindra Kumar Behera to come and settle the dispute with the petitioner and also a Panchayatnama was signed by the accused on 25.03.2002 agreeing to handover the trawler to the petitioner after necessary repairs and colouring within 15 days of such Panchayatnama. Admittedly, Rabindra Kumar Behera has not discharged his obligation under the said Panchayatnama. Although this Court is aware that the Panchayatnama is not subject matter of investigation, yet since the accused himself i.e. Rabindra Kumar Behera is the signatory to the said Panchayatnama, this Court considers that in the interest of justice and fair play, the I.I.C. Paradeep Police Station as well as I.I.C. Kakatpur Police Station, must have to submit report before this Court regarding the outcome of the F.I.R. lodged by the petitioner regarding loss of his fishing trawler and to ensure that Rabindra Kumar Behera acts in terms of his undertaking as recorded in the

Panchayatnama appended as Annexure-6 to the present writ application.

9. This writ application is disposed of with the aforesaid directions. Copy of this judgment to be communicated to the Superintendent of Police, Jagatsinghpur as well as the Superintendent of Police, Puri to ensure completion of investigation into the case as well as compliance of the undertaking before the Panchayat made by the accused Rabindra Kumar Behera (opposite party No.5) under Annexure-6.

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I.Mahanty,J.