
(2013) 08 OHC CK 0036
In the Orissa High Court
Case No : Criminal MC No. 285 of 2005

Amaresh Sarkar

APPELLANT

Vs

Siba Charan Bose and Another

RESPONDENT

Date of Decision : 02-08-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397(2), 482
Penal Code, 1860 (IPC) — Section 499, 500

Citation : (2013) 2 OLR 441

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : Sujata Jena, for the Appellant; S.C. Mohanty, J.K. Bastia and D.P. Mohanty, opposite party no. 1, for the Respondent

Final Decision : Allowed

Judgement

B.R. Sarangi, J.—By way of this application, the petitioner has sought to quash the entire proceeding initiated in I.C.C. Case No. 192 of 2004 under Sections 499 /500 of I.P.C. pending in the court of learned S.D.J.M., Sadar Cuttack. The factual background of the case in hand as revealed from the complaint petition, is that one Sudhansu Mohan Sarkar was the adopted son of Kali Krushna Sarkar and Chandanabilashini Dasi. The said Sudhansu Mohan in course of time married to one Usharani and out of their wed-lock a daughter was be-gotten, namely, Bishnupriya Devi, who is the mother of the complainant and wife of Late Kali Charan Bose. After the death of Sudhanshu Mohan and Usharani, Bishnupriya Devi became the absolute owner in respect of the properties left behind by Kali Krushna Sarkar. The complainant further alleged that even accepting that the petitioner has any interest in the properties of late Kali Krushna Sarkar, he has lost the same by ouster as the complainant and his brothers, sisters and mother are possessing the properties to the knowledge of whole world. The complainant has stated that though he and his family members had the title in respect of Sabik Khata No. 430, Plot Nos. 1406 & 1407 of mouza Patapur, district-Cuttack, the same was not recorded in their favour during the current settlement

operation. In order to declare their title, the complainant filed T.S. No. 222 of 1995 and his mother, brothers and sisters filed T.S. No. 223 of 1995 before the Civil Judge (Sr. Division), 1st Court, Cuttack. In both the suits the petitioner, being the defendant was contesting. However, T.S. No. 222 of 1995 was dismissed against which F.A. No. 75 of 1997 has been filed before this Court which is pending. It is alleged by the complainant that in the written statement filed by the petitioner in T.S. NO. 223 of 1995 certain imputations have been made in paragraphs 16, 22(x), 22(xiv) & 22(xx) against his father, mother and grand-mother purposefully in order to degrade the reputation and cause serious injury to them and his family's reputation as he is a respectable person of the locality. Therefore, the complaint petition has been filed by the complainant under Sections 499 /500 of I.P.C.

2. Mrs. Sujata Jena, learned counsel appearing for the petitioner strenuously urged that the complaint petition does not make out a case against the petitioner under Sections 499 /500 I.P.C. and as such the initiation of proceeding is bad. She Further urged that a civil dispute is pending between the parties and as such in Civil Appeal No. 1245 of 1977 decided on 16.11.95 in Smt. Chandan Bilasini (Dead) by LR. Vs. Aftabuddin Khan and others, the Hon''ble apex Court has held that the petitioner is the validly and legally adopted son of late Kali Krushna Sarkar and Chandanabilashini Dasi and the petitioner was adopted by late Chandanabilashini Dasi on 24.08.1965 after the death of her first adoptive son, Sudhansu Mohan on 07.03.1965 in unmarried status. Therefore, it is stated that while the civil suit was pending since long at the instance of the complainant, the very initiation of the present proceeding itself is an abuse of the process of Court, therefore, the same should be quashed. To substantiate her contention she has relied upon the judgments reported in Prashant Bharti Vrs. State of NCT of Delhi, 2013 (I) Supreme 493 and M. Mohan Vs. The State represented by The Deputy Superintendent of Police, indicating that this Court in exercise power u/s 482 of Cr.P.C. can quash the proceeding.

3. To the above factual position, it is stated that when there is a long standing dispute pending between the parties and the petitioner has been declared as the adopted son in view of judgment of the apex Court reported in Smt. Chandan Bilasini (supra) and parties are litigating to establish their right by approaching the appropriate civil court and T.S. No. 222 of 1995 filed by the defendant was dismissed and F.A. 75 of 1997 is pending before this Court, which requires adjudication on the basis of the contentions raised in the appeal itself, initiation of the present proceeding on the basis complaint lodged by the complainant is bad in law. So far as T.S. No. 223 of 1995 is concerned the same is pending before the learned Civil Judge (Sr. Division), 1st Court, Cuttack for adjudication and on the basis of the alleged imputation in the written statement filed by the petitioner in the said proceeding which is the subject matter of consideration by the said court, the present complaint petition should not have been filed. More so, the complaint petition does not disclose what is the imputation alleged to have been made by the petitioner in his written statement though the said

written statement has been filed as Annexure-4 to the complaint petition.

4. On perusal of the said written statement, it is seen that in respective paragraphs 16, 23(x), 23(xiv) & 23(xx) the present petitioner being defendant no. 1 added some factual aspects. So far as alleged imputation is concerned, it is the competent civil court to adjudicate and decide the same in proper perspective. In this backdrop of the case in hand, I am of the considered opinion that the complaint petition as such does not make out a case against the petitioner under Sections 499 /500 I.P.C.

5. The next question which arises for consideration in this case is in view of the settled legal position whether the High Court ought to have quashed the proceedings in exercise of its inherent power u/s 482 of the Cr.P.C. in the facts and circumstances of this case? The Hon'ble apex Court in R.P. Kapur Vs. The State of Punjab, summarized some categories of cases where the High Court in its inherent power can quash the proceeding.

6. In State of Karnataka Vs. L. Muniswamy and Others, the apex Court observed that the wholesome power u/s 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice requires that the proceedings ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In this case, the Court observed that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the Legislature. This case has been followed in a large number of subsequent cases of this Court and other courts.

7. In Madhu Limaye Vs. The State of Maharashtra, a three-Judge Bench of this Court held as under:-

... In case the impugned order clearly brings out a situation which is an abuse of the process of the court, or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. Such cases would necessarily be few and far between. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. The present case would undoubtedly fall for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, that the invoking of the revisional power of the High Court is impermissible.

8. Similar views have also been taken in Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others, , Janata Dal Vs. H.S. Chowdhary and Others, Dr. Raghubir Sharan Vs. The State of Bihar, , State of Haryana & Others V. Bhajan Lal & Others, (1992 Suppl. 1 SCC Page- 335, G.

Sagar Suri and Another Vs. State of U.P. and Others, , State of Andhra Pradesh Vs. Golconda Linga Swamy and Another, , Devendra and Others Vs. State of U.P. and Another, and State of A.P. Vs. Gourishetty Mahesh and Others, in which the Hon''ble apex Court has made various guidelines for exercising inherent power of the High Court u/s 482 Cr.P.C. and also cautioned that the power possessed by the High Court u/s 482 Cr.P.C. is very wide and very plenitude of the power requires great caution in its exercise and the Court must be careful to see that the decision in exercise of this power is based on some principle.

9. So far as the judgment in Prashant Bharti (supra) is concerned, reliance has been placed on paragraph 19 of the said judgment where reference has been made to Rajiv Thapar & Ors. Vs. Madan Lal Kapoor in Criminal Appeal No. 174 of 2013 arising SLP (Crl.) No. 4883/2008 decided on 23.01.2013 in which paragraphs 22 and 23 of the said judgment have been quoted. Considering the law laid down by the Hon''ble apex Court and the materials available on record, I am of the considered view that when the civil suit and appeal have been pending since long and the parties are striving hard to establish their right by approaching appropriate forum, the initiation of the said proceedings merely on the basis of some alleged statement made in the written statement, which do not make out a case for initiation of the proceeding u/s 499 and Section 500 I.P.C. will amount to the abuse of the process of the Court. Accordingly, ends of justice demands that the proceeding in I.C.C. case No. 192 of 2004 pending in the court of learned S.D.J.M. (S) Cuttack should be quashed. Accordingly the same is quashed. The CRL MC is allowed.