
(2004) 09 OHC CK 0009

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 2699 of 1999

Baikuntha Nath Jena

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 17-09-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 468, 482
Dowry Prohibition Act, 1961 — Section 3, 4, 7
Penal Code, 1860 (IPC) — Section 302, 306

Citation : (2004) 29 OCR 860 : (2004) 2 OLR 577

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : S.K. Dash, B. Mohapatra, S.K. Mishra and S.K. Dash, for the Appellant; G.K. Mishra, G.N. Mishra, A.Parida, S.P. Mohanty, A. Das and S.C. Biswal for Opp. Party No.2, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—Accused No. 1 in U.I. Case No. 168 of 1985 of the Court of Chief Judicial Magistrate, Khurda at Bhubaneswar is the Petitioner in this application u/s 482, Code of Criminal Procedure (CrPC), 1973 (in short the "Code"). He challenges to the order of cognizance for the offence under Sections 3 and 4, Dowry Prohibition Act, 1961 (in short the "Act") as per the order passed on 4.5.1999 by the learned Chief Judicial magistrate.

2. Contention of the Petitioner is that cognizance of the offence cannot be taken on the basis of Police report inasmuch as that is not a "complaint" within the meaning of term "complaint" as provided in Section 7 (i)(b) of the Act before its amendment by The Dowry Prohibition (Amendment) Act 63 of 1984 and therefore, the order of cognizance is bad. He also argued that cognizance of the offence after lapse of about two decades by condoning the delay is illegal and unjust.

3. Fact involved in the case highlights the contribution of the Courts below for

rendering a case old and stale notwithstanding the fact that in one round of litigation this Court regarded the matter to be serious one for due consideration after consideration of the matter relating to condonation of delay. A brief sketch of the fact involved in the case and history of previous litigation would indicate the same.

4. Petitioner's marriage with Sanjukta, the deceased, was solemnised on 1.5.1982. That marriage was subject to stipulation and bargaining of dowry, both in cash and ornaments so also landed property. Parents of the deceased succumbed to the demand and fulfilled it partly and the marriage was performed and completed. According to the allegation from the side of the Opp. Party No. 2, who was the informant, that after the marriage of his sister i.e. the deceased her ill fate started because of torture meted to her by the accused persons for the unfulfilled demand of dowry. In the meantime, Petitioner being posted as a Judicial Officer at Sambalpur, the deceased went and joined him there and shortly thereafter on 30.9.1982 she was found dead hanging from the ceiling of room of the house. In the previous application of the Petitioner u/s 482, Code of Criminal Procedure registered as Criminal Misc. Case No. 686 of 1989 and disposed of on 23.11.1989 (being reported in Volume Baikunthanath Jena Vs. State of Orissa and Another,) Hon'ble K. P. Mohapatra, J. (as His Lordship then was) pleased to note that:

...The records of the case do not disclose as to the proceeding that followed and whether any case was initiated to find out whether death was suicidal or was a result of homicide. It is further not known, on whom the responsibility for death of Sanjukta was fixed, but in U.I. Case No. 642 of 1983 the Chief Judicial Magistrate, Sambalpur, passed an order on 18.8.1983 saying that the prosecution report should be sent to the prosecutor by registered post with A.D. for presentation in the proper court.

5. On the basis of intimation, the Police at Sambalpur registered a case of unnatural death. Opp. Party No. 2 later on lodged a report alleging offence u/s 302/306, I.P.C. and after investigation, a prosecution report was submitted and that was registered as U.I. Case No. 652 of 1983 in the Court of Chief Judicial Magistrate, Sambalpur and after being transferred, the same was registered as U.I. Case No. 168 of 1985 and presently pending in the Court of Chief Judicial Magistrate, Bhubaneswar. In that context, in the above reported decision, the Court further observed:

...On 6.2.1985 the prosecution report which was returned to the Prosecutor was presented before the learned Sub-Divisional Judicial Magistrate, Bhubaneswar, and it is not known where it was lying for about two and half years in between. Even thereafter the case did not make any headway till 27.4.1987 when the elder sister of Sanjukta was examined in part as p.w.1. On 7.7.1987, however, a petition was filed challenging the order of cognizance on the ground that Section 468 of the Code of Criminal Procedure (for short "Code") was a bar and cognizance was taken long after expiry of the limitation prescribed under it. The

petition was heard and by order dated 30.7.1988 the learned Additional Chief Judicial Magistrate, Bhubaneswar, to whose Court the case was transferred, rejected the petition on the ground that he had no power of review of the earlier order, and so could not quash the order of cognizance taken earlier.

After appearance of the accused persons in the trial Court at Bhubaneswar accusation was explained to them and trial of the case was taken up and then Petitioner raised objection to the order of cognizance on the ground of limitation. That was turned down by the Additional Chief Judicial Magistrate, Bhubaneswar, who was then the trial Court of the case. As against that, Petitioner filed the above noted Criminal Misc. Case 686 of 1989 u/s 482 of the Code to quash the order of cognizance on the ground of limitation. After taking stock of the facts and circumstance involved in the case so also the position of law in Section 7 of the Act (before and after amendment in 1984) and the provision of law from the Code, learned Single Judge (as mentioned above) found that though the provision in unamended Section 7 of the Act is to be applicable, none the less, Chapter-XXXVI of the Code is applicable relating to condonation of delay. Taking that view in the matter while setting aside the order of cognizance, this Court remanded the matter to the Court below for providing opportunity of hearing to the parties and to consider the matter relating to condonation of delay. It was also observed in that case that:

For the foregoing reasons, the Criminal Misc. Case is allowed and the impugned order of cognizance dated 6.2.1986 is set aside. The case is remitted for expeditious disposal in accordance with law in the light of observations made above. The lower Court records be sent back forthwith. The parties are directed to appear in the said Court on 30.11.1989.

Notwithstanding the aforesaid direction, as it reveals from the certified copy of the order sheets from 6.2.1990 till 4.5.1999, the word "expeditious disposal" was conceded by the Magistracy in the lower Court by considering the matter relating to condonation of delay only after a period of ten years from the date of the aforesaid order of this court.

6. Be that as it may, in course of hearing of this application u/s 482, Code of Criminal Procedure and after going through the relevant materials, this Court finds that the order on condonation of delay is not infested with any illegality or perversity. In a reasoned order, learned Chief Judicial Magistrate has considered and condoned the delay. Therefore, this Court declines to interfere with that order.

7. Petitioner seeks exit from the criminal liability on the ground that the prosecution report which was the basis for the Court below to take cognizance is not a complaint and according to the pre-amended provision in Section 7 of the Act, cognizance could not have been taken in the absence of a complaint. Accordingly he canvassed his contention to quash the order of cognizance and the Criminal Proceeding. Section-7 of the Dowry Prohibition Act, as it originally

stood (prior to amendment) was reading as follows:

7. Cognizance of offences. - Notwithstanding anything contained in the Code of Criminal Procedure (CrPC), 1898 (5 of 1898):

(a) no Court inferior to that of a presidency Magistrate or a Magistrate of the first class shall try any offence under this Act;

(b) no Court shall take cognizance of any such offence except on a complaint made within one year from the date of the offence;

(c) it shall be lawful for a Presidency Magistrate or a Magistrate of the first class to pass any sentence authorized by this Act on any person convicted of an offence under this Act.

The Dowry Prohibition (Amendment) Act, 1984 (Amendment Act No. 63 of 1984) substituted and replaced Section 7 which is also quoted below:

7. (1) Notwithstanding anything contained in the Code of Criminal Procedure (CrPC), 1973-

(a) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;

(b) No Court shall take cognizance of the offence under this Act except upon-

(i) its own knowledge or a police report of the facts which constitute such offence; or

(ii) a complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognised welfare institution or organisation;

(c) It shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the First Class to pass any sentence authorised by this Act on any person convicted of any offence under this Act.

It is apparent from the above quoted provision that pre-amended provision mandated filing of a complaint as a pre-condition to pass order of cognizance. According to the Petitioner, prosecution report submitted by the Police Officer is not coming within the meaning of the term "complaint" as defined in the Explanation to Section 2 (d) of the Code in as much as the offence under Sections 3 and 4 of the Dowry Prohibition Act being non-cognizable offence, investigation of the same cannot be taken up without prior permission of the Magistrate as provided in Sub-section (2) of Section 155 of the Code. On the other hand, opposite party No. 2 argued that when the report lodged by the opposite party No. 2 was inter alia with the allegation of offence under Sections 302/306 Indian Penal Code and both the said offences are cognizable, therefore, prior permission of the Magistrate was not necessary for conducting the investigation and therefore restriction in Section 155 (2) of the Code is not applicable.

Aforesaid argument of opposite party No. 2 is appreciable because in course of investigation to the allegation constituting both cognizable and non-cognizable offences forming such categories of cases and ultimately if the Investigating Officer finds that a prima facie case for a non-cognizable offence is only made out, then he may submit a prosecution report/complaint and that is not liable to be rejected on the ground of no previous permission of the competent Magistrate in accordance with Section 155 (2) of the Code.

8. Apart from that, this Court finds that Petitioner did not raise such contention on the previous occasion i.e., when he pursued the remedy u/s 482 of the Code in Criminal Misc. Case No. 686 of 1989. The whole fact scenario thus leads to the circumstance that Petitioner is adopting different device, though unsuccessful, just to prolong disposal of the Criminal proceeding. That has to be discouraged.

9. For the reasons indicated above, this Court finds no merit in the contention of the petitioner so as to invoke inherent power to quash the order of cognizance or the Criminal Proceeding.

Accordingly, the application u/s 482, Code of Criminal Procedure (CrPC) is dismissed with a direction to the Court below to give priority for expeditious disposal of the decades old criminal proceeding by avoiding casual approach and liberal attitude.