

(2001) 12 OHC CK 0005

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 7190 of 2001

Bhramarbar Mohanty and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 03-12-2001

Acts Referred:

Constitution of India, 1950 — Article 141

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(1), 320(2), 320(9), 482

Penal Code, 1860 (IPC) — Section 302, 34, 361, 366, 376

Citation : (2002) 93 CLT 6 : (2002) 1 OLR 223

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

Bench : Single Bench

Advocate : S.R. Patnaik, P.N. Bhuyan, P. Behera, D. Pradhan and P. Patnaik, for the Appellant; Additional Government Advocate, Nibash Chandra Mishra, N.P. Patra and S. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

P. K. Tripathy

1. In this application u/s 482, Cr. P. C. petitioners pray to quash the order of cognizance taken by learned S. D. J. M., Athagarh in G. R. Case No. 179 of 2000.
2. Admittedly, petitioners are accused persons in G.R. Case No. 179 of 2000 of the Court of S.D.J.M., Athagarh. Cognizance of the offence u/s 366/34, I.P.C. has been taken on the basis of the investigation made on the F.I.R. of the informant who is the father of the girl who was allegedly kidnapped. The informant, alleged that this minor daughter aged 15 years was enticed away by the petitioners. On completion of investigation charge-sheet was submitted for the aforesaid offence and on perusal of the evidence on record learned S.D.J.M. took cognizance of the said offence and issued process against the petitioners.
3. Petitioners' prayer for quashing of the criminal proceeding is on the ground that the daughter of the informant voluntarily went with them because of love

affairs between her and petitioner no. 2 and thereafter they having married and blessed with a child and under such circumstance continuance of the criminal proceeding being detrimental damage to their marital life. They further stated that no useful purpose will be served by perusing the criminal litigation in as much as the victim will not support the prosecution. The kidnapped girl who is now in the custody of the petitioners has also entered appearance through counsel and advanced argument supporting the case of the petitioners. In support of the aforesaid argument and the prayer thereof they rely on the ratio in the cases of Liaquat Hussen Khan and another V. State of Orissa (2001) 21 OCR 437 and Pradipta Kumar Bark and another V. State of Orissa, (2001) 21 OCR 442. The State opposed to the aforesaid prayer on the ground of no legal provision in support of the quashing of the proceeding in view of existence of a prima facie case and non-compoundability of the offence. In that respect it relied on the case of Anil Kumar Panda V. State of Orissa and another (2001) 21 OCR 428.

4. In the case of Liaquat Hussen (*supra*) it was the admitted position on record, as noted in the cited decision, that by the date of alleged kidnapping the woman was 19 years old and the prima facie materials available on case diary was sufficiently indicating that she voluntarily walked away from the paternal home. Under such circumstance, a case of kidnapping or abduction was found not made out and the criminal proceeding was quashed. Such is not the circumstance so far as the present case is concerned. In this case, as admitted by the petitioners, the school leaving certificate of the girl shows that she was a minor i.e. aged about 15 years by the date of occurrence. The informant has also described that his daughter was fifteen years old. Therefore, keeping in view the provision in Section 361, IPC read with the relevant penal provisions in the Penal Code, in this case voluntariness in the action of the minor girl cannot be equated with the fact and the ratio in the case of Liaquat Hussen.

5. in the case of Pradipta (*supra*) the Criminal Proceeding was quashed involving the offences under Sections 376, 511, I.P.C. because of the statements made by the accused and the victim regarding maintaining a marital life. In that Judgment this Court has not laid any ratio that a case involving non-compoundable offence should be quashed because the offence is non-compoundable. According to Article 141 of the Constitution of India "The Law declared by the Supreme Court shall be binding on all Courts within the territory of India". Thus in the case of Anil Kumar Panda (*supra*) this Court on a reference to the ratio propounded by the Apex Court has laid down the ratio that when an offence is not compoundable either under sub-section (1) or (2) of Section 320, Cr. P. C. and in view of the provision in sub-section (9) of Section 320 quashing of criminal proceeding by invoking the inherent power because of an amicable settlement between the parties involving non-compoundable offences is impermissible and if done it will subserve the course of law, justice rather than advancing the ends of justice. In that decision the ratio from the Apex Court has also been followed that High Court should not casually but in appropriate cases only invoke the inherent

power when non-interference shall result in miscarriage of justice or failure of ends of justice or abuse of process of the Court.

6. Keeping in view the facts and offences alleged in the case at hand, this Court finds that non-interference with the furtherance of the criminal proceeding will not result in either failure or miscarriage of justice no quashing of the criminal proceeding is required in the interest of justice. The law makers in their wisdom have thought it proper that a case of kidnapping or abducting of a minor girl should not be made compoundable perhaps because of the fact that such a heinous crime is not only an offence against an individual or a family but also against the society. The theory of "might is right" has become a matter of history of barbaric days in the context of social life. The penal law providing punishment for such offences and making it non-compoundable delivers the message perceptibly that society is not prepared to tolerate such crime if persons enticing "minor girl and kidnapping from the lawful custody of the legal guardian shall be given the protection of law on the ground that he has married the girl than can that he said to be in the ends of justice or to save the proceeding from the abuse of the process of Court ? The only answer that is available is an emphatic "No". If such heinous offences shall be granted with protection of law as provided in Section 482, Cr.P.C. then in some such given circumstances even offenders of offences, like 302 and 396 I.P.C. can also be extended with the benefit by invoking the inherent power. Where it will lead the law and discipline if the logic advanced by the petitioner shall be accepted ? After committing a non-compoundable and heinous offence if the accused of the crime makes some adjustment, settlement or understanding with the victims that itself is no ground to make an inference that continuance of the proceeding will amount to abuse of process of Court. On the otherhand that term has been used by the legislators to protect the innocent persons who have been victimised by false or frivolous litigation in which the opponent in that respect takes shelter of some provisions of law intentionally but mischievously. In this case no such situation is available in favour of the petitioners or against the informant or the prosecution. If petitioner No. 2 had the desire to marry the kidnapped girl he should have negotiated through his father (petitioner No. 1) and if at all the informant was unwilling or not agreeable to that proposal, then the petitioners could have waited till the girl attained the age of majority and could not have taken law into their own hand by enticing away a minor girl from the lawful custody of her father who was the legal guardian. Therefore, the proceeding initiated is not on the basis of a false or frivolous allegation nor the process of the Court is misutilised either by the enforcement or by the prosecution. For that reason, the provision in Section 482, Cr.P.C. is not invocable in favour of the petitioners.

An argument was advanced by the petitioners as well as learned counsel appearing for the kidnapped girl that non-quashing of the criminal proceeding may disturb the family life of the petitioner No. 2 and the kidnapped girl. Such argument was hard to be rejected in as much as nobody had given them the guarantee that by performing the marriage the petitioners shall be absolved from

the criminal liability. Thus, the performance of marriage between the two cannot be accepted as a shield to protect petitioners' criminal act and that to a heinous criminal act. Apart from that, it is too much for the petitioners to seek protection of the High Court u/s 482, Cr.P.C. after committing such a heinous crime. Courts are there to protect the law and persons whose rights have been infringed. Courts do not exist to protect the wrong doers or to protect their illegal activities. This Court cannot be a party by delivering a message to the society that if a person kidnaps or entices away a minor girl from the lawful custody of her legal guardian and marries her, then the High Court is there to grant protection to such criminals. If such protection is extended to the offenders like the petitioners then it cannot be denied to others committing the offences like dacoity, murder or rape when they make some settlement with the victims of the crime. If such an approach is opened may widen think about the chaotic situation to which it will lead the society the civic life. On the other hand non-interference to protect the criminal may in some stray cases result in wrong to some individuals but it will do good to the society in general. Under such circumstances, this Court does not find an reason into invoke the inherent power to quash the proceeding.

7. It was also argued by learned counsel for the petitioners that as the kidnapped girl will not support the prosecution, therefore, the criminal trial will be a mere mockery in as much as that may not ensure in conviction. This Court does not agree with that consequence as inevitable. The girl who was enticed away is not the solitary witness to the occurrence. The evidence of her parents and other witnesses mentioned in the charge sheet if will depose in support of the allegation proving the ingredients of the offence, then that may result in a conviction. Be that as it may, the provision in Section 482, Cr.P.C. is not to be resorted to by making a hypothetical approach about acquittal when the trial is yet to commence. Apart from that, a Court is not a businessman or a merchant to count loss and profit in a criminal trial. It has to adjudicate a case on the basis of the evidence on record be it of conviction or acquittal when there exists prima facie case to frame charge and evidence is available to be recorded and accepted. Therefore, in the opinion of this Court a system of pedantic approach to the law and the procedure is the safe and systematic mode to maintain the law and procedure in the interest of the society than to consider the individual cause at the cost of law and discipline. If law does into permit something to be done and it is opposed to descency, morality and discipline, then it is not to be done by invoking inherent power.

8. Thus, judging from all angles this Court finds that this is not a fit case to invoke the inherent power and to quash the criminal proceeding of G.R. Case No. 179 of 2000 of the Court of S.D.J.M., Athagarh. Hence, the application u/s 482, Cr.P.C. is rejected and the Criminal Misc. Case is dismissed. Intimate the Court below accordingly.

9. Application dismissed