
(2001) 09 OHC CK 0026

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 8460 of 2000

Gobinda Chandra Sahoo and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 19-09-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 321, 482
Penal Code, 1860 (IPC) — Section 307, 34, 498A

Citation : (2002) 1 DMC 421 : (2001) 21 OCR 588 : (2001) 2 OLR 533

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

Bench : Single Bench

Advocate : S. Mohanty, B. Das and B.K. Panda, for the Appellant; Addl. Standing Counsel, for the Opposite Party No. 1, for the Respondent

Judgement

P.K. Tripathy, J.—The three accused persons in G.R. Case No. 4097 of 1994 of the Court of S.D.J.M., Bhubaneswar have filed this application u/s 482, Code of Criminal Procedure, 1973 (in short "the Code") with the prayer to quash the order of cognizance because of an amicable settlement of dispute between the parties outside the Court.

2. It is the undisputed fact that petitioner No. 3 is the husband of the informant and petitioner Nos. 1 and 2 are respectively the father and brother of petitioner No. 3. On 11.12.1994 the informant/opposite party No. 2 lodged the F.I.R. Annexure 2 alleging ill-treatment and cruelty on her by the said accused persons for non-fulfilment of the demand for dowry and also relating to the attempt made to kill her. She also stated in the F.I.R. regarding previous conciliation on the intervention of the gentlemen but in spite of assurance of good behaviour continuance of the ill-treatment and attempt to murder. After a prolonged investigation, which appears to this Court to be unnecessary, a charge-sheet was filed on 31.12.1997 and for reasons best known to him (having remained unexplained) learned S.D.J.M. attended to that charge-sheet on 12.7.1999 and took cognizance of the offence under Sections 498A/307/34, I.P.C. and issued

process i.e., non-available warrant of arrest because the petitioners had been shown as absconders. Petitioners are yet to submit to the jurisdiction of the Magistrate and that is apparent from the stay order passed by this Court on 8.2.2001.

3. Though in the application u/s 482 of the Code two grounds, viz., the ground of absence of prima facie case and the ground of amicable settlement, has been advanced in support of the prayer to quash the order of cognizance but at the time of argument petitioners only press into service the second ground i.e., the ground of compromise in support of their prayer. It is stated that on the basis of compromise on 18.9.1999 the petitioner No. 3 and the opposite party No. 2 are leading a peaceful conjugal life and, therefore, the order of cognizance be quashed. It is stated in the application that on the basis of that compromise an application u/s 482, Cr.P.C. was filed by the accused persons with the prayer to quash the F.I.R. That application was registered as Criminal Misc. Case No. 4755 of 2000 and disposed of on 16.11.2000. Learned Counsel for the petitioner states that since a charge-sheet had already been filed and some of the petitioners in that case having not been charge-sheeted, this Court rejected that application as infructuous.

4. On a reference to the order dated 16.11.2000 in Criminal Misc. Case No. 4755 of 2000 this Court finds that the present petitioner No. 3 Chakradhar was not an applicant in that case. It further appears that prayer to quash the F.I.R. was found infructuous because of submission of charge-sheet and taking cognizance of the offence. It also appears from that order that observation was made that if an application for compromise shall be filed, learned S.D.J.M. shall dispose of the same in accordance with provision in Section 320 of the Code. This Court also permitted petitioner Nos. 1 and 2 Govinda and Ramesh to surrender in the Court of S.D.J.M. by 30.11.2000 and to apply for bail. This application u/s 482, Cr.P.C. was however filed on 24.11.2000 and stay order was obtained. There is nothing on the record to indicate that while moving for stay Hon'ble Judge was informed about the order and observation made on 16.11.2000 in Cri. Misc. Case No. 4755 of 2000.

5. Be that as it may, petitioners' prayer to quash the order of cognizance is on the ground of compromise i.e., an amicable settlement between the parties. Learned Counsel for the petitioner while conceding to the position of law that offences under Sections 498A and 307, I.P.C. are not compoundable u/s 320 of the Code argued that in view of the ratio in the case of Subash Chandra Mishra v. Republic of India and Anr., 2001 (I) OLR 1, the cognizance order in this case be quashed since the offences are not compoundable. After taking due note of the above citations and number of cases from this Court and the Apex Court, in the case of Anil Kumar Panda v. State of Orissa and Anr., vide Criminal Misc. Case No. 2857 of 2000 (judgment delivered on 28.8.2001), this Court has held that prayer to quash a criminal proceeding on the basis of a compromise is not entertainable when the offence is of non-compoundable u/s 320 of the Code and

because of the prohibition imposed in Sub-section (9) in that section. This Court also held that in such a case remedy u/s 321, Cr.P.C. if so advised may be resorted to by a party in appropriate cases. Under such circumstances petitioners' prayer in this case for quashing of the cognizance order is found to be without any merit. Accordingly, the criminal Misc. Case is dismissed.

6. If the petitioners have not yet surrendered in the Court of S.D.J.M., Bhubaneswar, then they may surrender within a period of two weeks. If they surrender and apply for bail, that may be considered in accordance with law but expeditiously. In the event they do not surrender, learned S.D.J.M. shall do well to ask the concerned Police Officer to execute the warrant expeditiously to secure the attendance of the accused persons and in that event, the Court may be slow to consider the prayer for bail because of the absconding conduct of the petitioner and not surrendering to the jurisdiction of the Court.