

(2004) 08 OHC CK 0021

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 1128 of 2002

Gouri Sankar Nayak and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 13-08-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 365, 366, 376
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2004) 29 OCR 585

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : D.P. Dhal, for the Appellant; P.K. Das and S.K. Dash, for the Respondent

Judgement

A.S. Naidu, J.—It is said "Love is Blind". Probably that is the reason why the Petitioners have been arrayed as accused in G.R. Case No. 52 of 2002 pending before the S.D.J.M., Nilgiri.

2. The criminal action was set in motion consequent upon filing of an FIR before the OIC of Raj Berhampur P.S. by Manjulata Padhan, opposite party No. 2 in the present case. In the FIR it was alleged that promising to marry her, Gourisankar, Petitioner No. 1 in CRLMC No. 1128/02, along with his friends forcibly lifted opposite party No. 2, enjoyed her and thereafter backed out from his promise. After investigation charge-sheet was filed against the Petitioners under Sections 366/376/365/34 I PC read with Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. The Petitioners have approached this Court with a prayer to quash the further proceedings of the aforesaid G.R. Case on the ground that by efflux of time the difference between the parties has been reconciled. Petitioner No. 1 has in the meanwhile married opposite party No. 2 and not only they are leading a blissful married life but also they have been blessed with a son born out of their wed-

lock.

4. One of the friends of Gourisankar, namely, Bhagaban Bag has also approached this Court in the aforesaid Criminal Misc. Case No. 821 of 2002 with the self-same prayer to quash the proceedings of the same G.R. Case.

5. This Court, in order to ascertain the truth, issued notice to the informant opposite party No. 2. After receipt of notice she has appeared before this Court through her counsel. An affidavit has also been filed by her solemnly affirming as follows:

That I have married to Petitioner No. 1 namely Sri Gourisankar Nayak at Sri Sri Khirachora Gopinath Jew Temple at Remuna, Dist Balasore on 23.4.2002 in my own volition and the marriage was solemnized as per Hindu rites and customs in the Temple.

That after marriage I am leading a happy conjugal life with my husband and due to wedlock I have given birth to a female child namely Chinmayee Nayak on 23.6.2003 and now we are living with our child happily.

6. In course of hearing, Learned Counsel for the informant in the G.R. Case submitted before this Court that the informant has married Petitioner No. 1 in Criminal Misc. Case No. 1128/02 and is no more interested to prosecute the G.R. Case.

7. I have heard Learned Counsel for the parties at length and perused the affidavit filed by the informant. The informant is a major lady. She has the right to choose her husband. She has stated on solemn affirmation that she has married Gourisankar in the meanwhile and both of them are leading a blissful life. It is also stated by her that out of their wed-lock a child has born. The birth certificate of the child was produced in Court which reveals the parentage of the child and that Gourisankar is the father. In view of the aforesaid overwhelming evidence and the statements made by the informant that she is no longer interested to prosecute the G.R. Case, I feel, there is no chance of conviction in the case and therefore further continuance of the said case in the changed scenario will not only cause a dent in the blissful married life, but also will ultimately prejudice all the parties and will amount to abuse of the process of law. In View of the aforesaid circumstances and relying on the ratio of the decision of the SC in the case of Fazle Gaffar Khan v. State of West Bengal 2000 SCC (CrI) 686, which has been followed in a catena of decisions of this Court, I have no hesitation to allow the prayer in both the Criminal Misc. Cases and quash the proceedings of G.R. Case No. 52 of 2000 pending on the file of the S.D.J.M., Nilgiri, and direct accordingly.

8. Both the Criminal Misc. Cases are disposed of.