

(1998) 07 OHC CK 0040

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 961 of 1998

Goutam Sahu and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 01-07-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 493, 500

Citation : (1999) CriLJ 838 : (1998) 2 OLR 194

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

Bench : Single Bench

Advocate : S.K. Nayak, S.R. Patnaik, P.K. Lenka, J. Katikia, N. Sahani and B.K. Misra, for the Appellant; Lalitendu Mishra and B.N. Sarangi (O.P.-2), for the Respondent

Judgement

P.K. Tripathy, J.—Argument in this case was heard from both the sides on 14.5.1998 but as the petitioners wanted to cite some decisions therefore the case was adjourned. At the stage of hearing of the aforesaid case both the parties consented that this application should be disposed of at the stage of hearing on admission and accordingly both the parties participated and advanced arguments. On 29.6.1998 when the matter had been listed for further hearing i.e. for filing citations, both the parties did not appear. No citation was filed on behalf of the petitioners. Hence, order was passed to list this case today for judgment.

2. In this application u/s 482 of the Code of Criminal Procedure (in short the Code") accused persons of I.C.C. Case No. 86/97 of the Court of J.M.F.C., Narasinghpur have challenged the legality and the correctness of the order of cognizance taken by the Magistrate vide the impugned order dt. 27.1.1998. It reveals from the complaint petition and the statements of the complainant and her father who was examined as witness, that allegations against the accused Goutam Sahu alias Gugul Sahu is that he developed intimacy with the complainant and married the complainant by exchange of garland in the village

temple in presence of village gentlemen and thereafter took her to his house and they resided together as husband and wife. The further allegation against him is that they lived happily for some days and thereafter the accused asked her to bring Rs. 20,000/-from her father and also threatened to kill her in the case of returning empty handed and also manhandled her and drove her out from his house. Ultimately, the matter was brought to the notice of the caste people and the community people and all the accused persons (the petitioners) attended that meeting but refused to accept her on the ground that she is unchaste and not decent looking. Complainant has further alleged that because of the above conduct of the petitioners she has been defamed. In her statement she has further stated that prior to the aforesaid marriage in the temple also accused Goutama Sahu had enjoyed her sexually.

3. On the basis of the above noted statements in the complaint petition as well as the statements of witness learned J.M.F.C. recorded the finding that a prima facie case against Goutam Sahu is made out u/s 493, IPC and u/s 500, IPC against the rest of the accused persons. Accordingly he took cognizance of the offences and issued process directing for their appearance.

4. Learned counsel for petitioners argued that a prima facie case under Sections 493 and 500 IPC is not made out from the available materials in the record. Drawing attention of the Court to Annexure-4 (xerox copy of the money receipt said to have been granted by the complainant in favour of one Anadi Rout) he argued that the petitioner is in the habit of extracting money by alleging sex scandal. Learned counsel appearing for complainant-opp. party, on the other hand, argued that a prima facie case is made out against the petitioners and accordingly he supported the impugned order.

5. Chapter XX of the Indian Penal Code deals with the offences relating to marriage. Section 493 prescribes punishment for the offence of cohabitation caused by a man deceitfully inducing a belief of lawful marriage. It is apparent from the language used in Section 493, IPC for taking cognizance of that offence that a prima facie case has to be made out satisfying the ingredients that -

- (i) Accused caused the complainant to believe that she was lawfully married to him;
- (ii) He induced the complainant to cohabit with him under that belief; and
- (iii) He caused such belief by deceit.

In matching the said ingredients with the facts available in the complaint petition as well as the statements of the complainant and her father the ingredients prima facie does not appear to have been made out relating to a cohabitation having been done with intent to deceive her relating to their marital status so as to enjoy her sexually.

6. So far as ingredients of Section 500, IPC is concerned the complainant has to make out a case of (1) making any imputation concerning her, (2) that such

imputation was made by words spoken or written or by sign or visible representations, and (3) that such imputation was made with the intention of harming or with the knowledge or having reason to believe that it would harm the reputation of the complainant against whom such statement was made. So far as the ingredients of Section 500, IPC is concerned, from the statements available in record a prima facie case is made out.

7. It thus appears from the above discussions that though a prima facie case against accused persons is made out u/s 500, IPC yet a case u/s 493, IPC has not been made out against the accused-petitioner Goutam Sahu. But the statements available in the case record may lead to some other offence/offences against the accused Goutama. Under such circumstances cognizance order for the offence u/s 493, IPC is set aside. However, learned Magistrate is directed to peruse the statements in record and to take cognizance of the appropriate offence/ offences,if any, made out against accused Goutam Sahu.

The Criminal Misc. Case is disposed of accordingly.