

(2005) 05 OHC CK 0010
In the Orissa High Court
Case No : CRLMC No. 837 of 2004

Hemanta Kumar Behura and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 11-05-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 34, 498A

Citation : (2005) CLT 1097 (Suppl CrI) : (2006) 1 DMC 293 : (2005) 2 OLR 296 : (2005) OLR 1097 (Suppl CrI)

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Advocate : S.K. Nayak, S. Das, S.K. Sahu, B. Nayak, B.B. Behera and S.K. Mulia, for the Appellant; C. Kasturi, Additional Government Advocate (for O.P. No. 1), P.R. Barik, S.P. Mohanty and P. Choudhury, (for O.P. No. 2), for the Respondent

Final Decision : Allowed

Judgement

A.K. Parichha, J.

1.This is an application u/s 482, Cr.P.C. filed by the petitioners for quashing the proceeding in G.R.Case No. 2352 of 2002 of the learned JMFC, Bhubaneswar.

2. Basing on an FIR lodged by one Bandana Pradhan @ Beura, Capital P.S.Case No. 342 of 2002 was registered, investigation was conducted and on conclusion of investigation, charge-sheet was submitted against the petitioners for the offence under Sections 498-A/34, IPC and Section 4 of the D.P.Act. After perusing the materials placed by the prosecution alongwith the charge-sheet, learned JMFC, Bhubaneswar took cognizance of those offences in the above noted G.R. Case and directed issue of process against the petitioners. Aggrieved, the petitioners have come up with the present application for quashing the order of cognizance as well as the proceeding of G.R.Case No. 2352 of 2002.

3. Mr. S. K. Nayak, learned counsel for the petitioners submits that in the meantime, amicable settlement has been reached between opposite party No. 2-wife and petitioner No. 1-husband and a decree of divorce on mutual consent has been obtained from the competent Court. He submits that after the decree of divorce, peace and amity has been restored between the parties, but the existence of the G.R.Case No. 2352 of 2002 in the Court of learned JMFC, Bhubaneswar is now creating unease and tension. He submits that the opposite party No. 2 had already received permanent alimony of Rs. 2.5 lakhs and is not at all interested in continuance of the above said G.R.Case. So, the chance of conviction in that case has also become totally bleak. Therefore, to save the abuse of the process of the Court and to maintain a comfortable atmosphere in the lives of the parties, it is necessary to quash the proceeding of the aforesaid G.R.Case.

4. Learned Addl. Government Advocate, on the other hand, submits that no doubt a decree of divorce by mutual consent has been obtained by petitioner No. 1 and opposite party No. 2 but that cannot form a ground for quashing of the proceeding in G.R.Case No. 2352 of 2002 as non-compoundable offences are involved in that case. According to her, a case involving non-compoundable offences cannot be quashed on the basis of compromise between the parties, as such action would tantamount to over-riding the bar provided u/s 320, Cr.P.C.

5. In view of the rival submissions of the learned counsel for the respective parties, the question now comes up for consideration is whether proceeding of a criminal case involving non-compoundable offences can be quashed by invoking the power u/s 482, Cr.P.C.

6. In the case of G.V. Rao v. L.H.V. Prasad and Ors., : 2000CriLJ3487 , an identical question came up for consideration before the Apex Court. In that case also the parties wanted quashing of the proceeding of the Criminal case involving offences u/s 498-A, IPC on the plea that amicable settlement has been reached between the parties and the differences have been resolved. Analysing the situation, the Apex Court observed that there is no doubt that the object of introducing Chapter XX-A containing Section 498-A, IPC was to prevent the torture to a woman by her husband or by relatives of her husband and for punishing those culprits. But a hyper-technical view in the matter would be counter productive and would act against the interest of the women and against the object for which the provision was added. It was also observed that little matrimonial skirmishes suddenly erupt, which often assume serious proportion resulting in commission of heinous crime in which elders of the family are involved with the result that those who could have counselled and brought about re-approachment are rendered helpless on their being arraigned as accused in the criminal case. The Court further observed that there are many other reasons, which need not be mentioned, for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a Court of law where it takes

years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different Courts.

7. In the case of B.S. Joshi and Ors. v. State of Haryana and Anr. (2003) 25 OCR 99 also the Apex Court held that quashing of the proceeding involving offences which are not compoundable, is also permissible if quashing of the proceeding is necessary for the purpose of securing justice. It was specifically said that where the continuance of the proceeding involving matrimonial offences would adversely affect the marital lives of the parties and where continuance of such proceeding would be abuse of the process of the Court, cognizance can be quashed by invoking the power u/s 482, Cr.P.C. and in such situation, Section 320, Cr.P.C. will not stand as a bar.

8. In the instant case, the victim-informant, who is opposite party No. 2 has filed an affidavit that due to some misunderstanding and dispute in the family, she had initiated the case against the petitioners, but later on, the matter was amicably settled and she voluntarily obtained a decree of divorce, accepted permanent alimony and is now living peacefully, and that she is not eager to pursue the criminal case against the petitioners as continuance of the case will create unnecessary tension to her and also to the petitioners.

9. Now that the opposite party No. 2 who is the informant of the case has shown reluctance to pursue the case, chance of conviction of the petitioners in the case has become bleak. That apart, continuance of the proceeding of the G.R. Case will unnecessarily dis-settle the parties from the present peaceful mooring and will not achieve any purposeful result. As such, continuance of the proceeding would be simply abuse of the process of the Court. So, in my considered opinion the best course available is to quash the proceeding of G.R. Case No. 2352 of 2002 of the Court of learned JMFC, Bhubaneswar, as that will impart equitable justice to the parties.

10. In the result, the proceeding in G.R. Case No. 2352 of 2002 pending in the Court of learned JMFC, Bhubaneswar is quashed.

11. CRLMC is accordingly allowed.