

(2003) 04 OHC CK 0008
In the Orissa High Court
Case No : C.M. Case No. 729 of 2003

Nikhil Kumar Pattanaik and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 23-04-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(1), 320(2), 482
Penal Code, 1860 (IPC) — Section 294

Citation : (2003) CLT 878 (Suppl CrI) : (2003) CriLJ 3957 : (2003) 25 OCR 255 : (2003) 2 OLR 61

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

Bench : Single Bench

Advocate : D.P. Dhal, for the Appellant; Addl. Standing Counsel (for No. 1) G.B. Jena and Sujana Jena, (for No. 2), for the Respondent

Judgement

A.S. Naidu, J.—This Criminal Misc. Case has been filed invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quashing the order dated 27-2-2003 passed by the J.M.F.C., Sohella in G. R. Case No. 160 of 2002 taking cognizance of offences under Sections 341/448/294/506/34, I.P.C. alleged against the petitioners.

2. The criminal action was not in motion on the basis of an FIR lodged by the informant opposite party No. 2, who is an employee of the Road Transport Organisation and working as A.R.T.O. at Luhurachati Check Gate under Sohela P. S. in the district of Bargarh. It was alleged that the petitioners who were working as colleagues of the informant came to his house and started scolding him in filthy language. Most of them were drunk and were not in conscious state and they behaved in peculiar fashion. On the basis of the said FIR, the G. R. Case was initiated in which charge-sheet has been submitted on 26-2-2003 for commission of offences as stated above.

3. Mr. Dhal, learned counsel for the petitioners, forcefully submitted that the entire incident occurred when the parties were not in conscious state and that

the informant and the accused petitioners are all colleagues and friends. There was no mens rea nor any intention to harm the informant and the FIR had been lodged in haste. He further submitted that with the intervention of well-wishers and colleagues of the parties, the dissension among them has been patched up.

4. In course of hearing, the informant appeared through Mr. G. B. Jena and Mrs. Sujata Jena, Advocates who filed a Vakalatnama on 18-4-2003. A petition was also filed jointly by the petitioners and the informant-opposite party No. 2 u/s 320(1), Cr. P. C. which is sworn to by both the parties inter alia stating that the dispute between the parties has been compromised and that pendency of the present criminal case would rather create a dent in their cordial relationship. A separate affidavit has also been filed by opposite party No. 2 solemnly affirming that the FIR had been filed by him, but as the matter has been settled, he is no more interested to prosecute the case. Learned counsel for opposite party No. 2 also reiterated the facts stated in the petition as well as the affidavit and prayed to quash the proceedings of the aforesaid G. R. Case.

5. Section 320, Cr. P. C. empowers the Court to compound certain offences more fully described therein. Under Sub-section (1) of Section 320, Cr. P. C., the offences punishable under the Indian Penal Code which can be compounded and the person by whom such offences can be compounded have been stipulated. Similarly, under Sub-section (2) of Section 320, Cr. P. C. the offences punishable under the Indian Penal Code which can be compromised with permission of Court before which prosecution for the offences is pending are stipulated in a tabular form. Law is well settled that only the offences which have been specifically stipulated can be compounded as provided either u/s 320(1) or Section 320(2), Cr. P. C.

6. What is compounding is no more res integra. A compromise effected between a complainant and the accused amounts to compounding the offence. It has the effect of acquittal of the accused. But then, u/s 320, Cr. P. C., a Criminal Court has no power to grant permission to compound a non-compoundable offence, i.e. an offence which does not come within either of the two tables specified u/s 320(1) or Section 320(2), Cr. P. C. A Magistrate or a Sessions Judge who does not possess inherent power has no authority to accord permission to compound a non-compound-able offence. But then, can the High Court in exercise of the power u/s 482 of the Code in a given case quash a criminal proceeding is the question posed. The scope and ambit of Section 482, Cr. P. C. have been examined by the Supreme Court in a number of cases.

In the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, the Supreme Court has observed as follows :

"In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 482 of the Code which we have extracted

and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulate (sic) and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised."

In the case of *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others*, also the guidelines where the inherent powers u/s 482 of the Code could be or could not be exercised have been lucidly laid down. Exercise of such powers unambiguously would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It is well settled that these powers have no limits. Of course, where there is more power, it becomes necessary to exercise utmost care and caution while invoking such powers is to be kept in mind.

In the case of *Madhu Limaye Vs. The State of Maharashtra*, the Supreme Court has also laid down the limits of the power of the High Court for quashing the criminal proceedings or FIR or complaint. It was inter alia held that if for the purpose of securing the ends of justice, interference by the High Court is absolutely necessary, then nothing contained in the Code can limit or affect the exercise of the inherent powers of the High Court.

In the case of *State of Karnataka Vs. L. Muniswamy and Others*, considering the scope of inherent powers u/s 482, Cr. P. C., it was held that in the exercise of this wholesome power, the High Court is entitled to quash proceedings if it comes to the conclusion that ends of justice so require. While considering such proposition in a criminal case the High Court has to always consider the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests which would justify the High Court in quashing the proceedings in the interest of justice. It has to be always kept in mind that ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature.

In the case of *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others*, it has been held that while exercising inherent power of quashing u/s 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. It was observed that where in the opinion of the Court chances of an ultimate conviction is bleak and. therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may, while taking into consideration the special facts of a case, also quash the proceedings.

In a recent decision, i.e. in the case of *B.S. Joshi and Others Vs. State of Haryana and Another*, considering all the earlier decisions, the Supreme Court

arrived at a conclusion that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers of the Court u/s 482 of the Code.

7. In the present case, all the offences alleged against the petitioners, except the offence u/s 294, IPC, are covered by the tables prescribed u/s 320 of the Code and are compoundable.

In the case of *Sudarsan Sabat v. State of Orissa* (1998) 15 OCR 459 this Court relying upon the ratio of the decision in the case of *Sudhakar Nayak v. State* (1996) 11 OCR 77, held that though a Magistrate definitely cannot compound an offence which is not covered by the tables prescribed u/s 320 of the Code, the High Court in appropriate case can quash the proceeding in respect of a non-compoundable offence in the interest of justice.

Here, as narrated above, all the parties are colleagues and the offences alleged are also not so grave and are more in the nature of a prank at a colleague. The informant on the basis of whose FIR the G. R. Case was initiated also appeared before this Court and filed an affidavit specifically and unambiguously stating that the parties have ironed their disputes, if any, and he does not want to prosecute the case. At the cost of repetition, it is reiterated that the parties are colleagues and are working in the same office. If they have arrived at a compromise, it is a fit case where to secure the ends of justice the criminal proceeding should be quashed. Accordingly, I am of the view that it would not be in the interest of justice to allow the criminal case to continue any further.

8. In the result, the Criminal Misc. Case is allowed. The proceedings of G. R. Case No. 160 of 2002 on the file of the J.M.F.C., Sohela are quashed.