

(2005) 07 OHC CK 0007
In the Orissa High Court
Case No : CRMC No. 2700 of 1996

Pradipta Kumar Swain

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 13-07-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 320, 393, 417, 423, 427
Dowry Prohibition Act, 1961 — Section 4
Hindu Marriage Act, 1955 — Section 13B
Penal Code, 1860 (IPC) — Section 34, 379, 406, 498A

Citation : (2005) CLT 1049 (Suppl CrI) : (2005) 2 DMC 697 : (2005) 2 OLR 277

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : S.K. Das, B.N. Mohapatra, S.K. Mishra and B. Mohapatra, for the Appellant; Additional Standing Counsel and S.K. Dash, for opp. party No. 2 and B. Pradhan and Om Prakash Mohanty for opp. party No. 3, for the Respondent

Judgement

B.P. Das, J.—The petitioner has filed this application u/s 482 of the Code of Criminal Procedure with a prayer to quash the proceeding in Criminal Appeal No. 55/1991 pending in the Court of Additional Sessions Judge, Puri arising out of the judgment and order of conviction passed by the Chief Judicial Magistrate, Puri in G.R. Case No. 1396 of 1989 on 10.4.1991.

2. The brief facts leading to this application are that opposite party No. 3, who is the wife of the petitioner, filed an F.I.R. against the petitioner and others 5.7.89, basing upon which the aforesaid G.R. Case No. 1396 of 1989 was registered. The petitioner was charged under Sections 498-A and 379 of the Indian Penal Code (in short, "the I.P.C.") and Section 4 of the Dowry Prohibition Act (in short, the D.P. Act) read with Section 34 of I.P.C. It is worthwhile to mention here that the petitioner was charged along with other co-accused persons and ultimately, the petitioner along with them was convicted by the learned Chief Judicial Magistrate, Puri in respect of the alleged offences under Sections 498-A/406 of

I.P.C. and Section 4 of D.P. Act read with Section 34 of I.P.C. All of them were sentenced to undergo R.I. for a period of two years and to pay a fine of Rs. 5000/- each, in default to undergo R.I. for a period of six months u/s 498-A read with Section 34 I.P.C. and to undergo R.I. for a period of six months and to pay fine of Rs. 2000/- each in default to undergo R.I. for a period of three months u/s 4 of D.P. Act read with Section 34 I.P.C. In addition to that the present petitioner, Pradipta Kumar Swain was sentenced to undergo R.I. for a period of six months u/s 406 I.P.C. The substantive sentences were ordered to run concurrently. The said order of conviction was challenged in Criminal Appeal No. 55 of 1991 before the First Additional Sessions Judge, Puri and while disposing of the said Appeal, the learned Additional Sessions Judge set aside the order of conviction and sentence u/s 4 of D.P. Act, maintained the order of conviction and sentence under Sections 498-A/34 of I.P.C. passed by the trial Court against all the accused persons and that u/s 406 of I.P.C. against the present petitioner only. The said order of the appellate Court was challenged in Criminal Revision Case No. 508 of 1993. This Court while disposing of the aforesaid Criminal Revision on 8.11.93 passed the following orders :

"XXX In my opinion, therefore, the examination of Bhaskar Chandra Dash whose examination was prayed for in the affidavit dated 7.4.93 should have been allowed so also the petition to recall P.W.4 for further examination. Accordingly set aside the order of conviction and sentence passed by the appellate Court in Criminal Appeal No. 55/ 91 dated 4.10.93 and remand it to the appellate Court for disposal of the said appeal afresh after taking the evidence of Bhaskar Chandra Dash and further examination of P.Ws.2, 12 and P.W. 14 (the I.O.) and such other witnesses as may be considered necessary in the opinion of the Court in connection with the proof of the allegations made in the petition dated 7.4.93 and also after examining P.W.4 on being recalled and after examining such other witnesses as the Court may consider for necessary consideration of the evidence that may come from P.W.4 on his re-examination and shall dispose of the appeal thereafter in accordance with law."

3. Thereafter the case took a different turn. The petitioner instituted a suit for divorce in the Court of Sub-ordinate Judge, Jagatsinghpur on 29.8.1988 and the same was transferred to the Family Court, Cuttack and was re-numbered as C.P. No. 212 of 1991. Ultimately, the petitioner and his wife, opposite party No. 3 resolved their dispute on certain terms and conditions and filed an application u/s 13-B of the Hindu Marriage Act. 1955. A copy of the joint application was filed before this Court, which has been annexed as Annexure-1 to this CRMC petition. The terms of compromise set forth in the said application were as follows :-

"XXX a) There shall be a decree for divorce dissolving the marriage of the parties.

b) The opposite party has accepted a sum of Rs. 3 lakhs paid to her through several pay orders and also in cash as mentioned in Annexure-1 to this petition in presence of the Court towards all her present and future claim including the share in the ancestral and self-acquired properties of the petitioner and the

alleged streedhan or dowry articles said to have been given before or at the time of or at any time subsequent to their marriage. The opposite party hereby releases the petitioner from the obligation to maintain her on any account whatsoever.

c) The parties mutually agreed, not to prosecute each other on account of any matter arising out of the matrimony. The petitioner shall obtain the leave of the Hon"ble High Court or any other competent Court, to get the proceedings in Crl. Appeal No. 55 of 1991 pending in the Court of learned Additional District Judge, District Court, Puri (arising out of the aforementioned G.R. Case No. 1396/89) and I.C.C. No. 13 of 1991 pending in the Court of learned Chief Judicial Magistrate, Puri quashed. The opposite party will cooperate in the matter of quashing of the said proceedings and shall not press the complaint case in the Court below, which has remain stayed on account of the orders passed by the Hon"ble Court.

d) The opposite party shall not hereinafter make any complaint against the petitioner before his employer on this account whatsoever and shall not have any further grievances in case the service of the petitioner is regularized and the pending departmental proceeding is dropped."

The said Annexure indicates that the petitioner had paid a sum of Rs. 3.00 lakhs by way of bank draft and cash. Annexure-2 to this CRMC petition is an affidavit of Smt. Amitarani Khuntia, wife of the present petitioner, who was the informant in G.R. Case No. 1396 of 1989. Paragraphs 1 and 2 of the said affidavit are as follows -

"1) That I am the informant in G.R. Case No. 1396 of 1989. I have gone through the contents of the application of the petitioner for quashing of the said proceeding.

2) That in view of the terms contained in the application for mutual divorce, I have no hesitation to declare that the criminal prosecutions initiated on account of my complaint are liable to be dropped/quashed. The facts stated in the application for quashing of the proceeding pending in the Court of learned Additional District Judge, First Court, Puri are true to the best of my knowledge. I have handed over this affidavit to the petitioner for filing the same in the Hon"ble Court."

4. During course of hearing of this CRMC petition, on 25.3.2002, opposite party No. 3 has filed an affidavit in this Court disclosing the following facts :-

"2) That the marriage between myself, who is the informant and the petitioner, who is one of the accused in Criminal Appeal No. 55/91, pending in the Court of learned Chief Judicial Magistrate, Puri has been dissolved by a mutual decree of divorce, by order dt. 7.8.1996 passed in C.P. No. 212/91 by the a learned Judge, Family Court, Cuttack. As per the terms of the compromise, our matrimonial relationship came to an end and that after receipt of a sum of Rs. 3,00,000/-

(Rupees three lakhs) only towards permanent alimony, I have re-married in March, 1998 and have been blessed with a daughter in February, 2001 out of the said wedlock.

3) That further continuance of the above noted appeal which is pending disposal being remanded for additional evidence after the conviction was set aside by the Hon"ble Court in CrI. Revision No. 508 of 93 will be detrimental to the interest of the parties."

From the said affidavit, it is clear that the marriage between the parties has already been dissolved and opposite party No. 3- wife has re-married and has been blessed with a daughter in February, 2001. Basing upon the aforesaid documents and in the twist events, the petitioner has filed this Criminal Misc. Case with a prayer to quash the proceeding in G.R. Case. From the affidavit it appears that the criminal case was the outcome of the matrimonial proceeding and the informant-wife does not want to proceed with the same. However, some of the offences for which the petitioner was charged and convicted in the criminal case are not compoundable. Now the question arises as to whether at this stage when this Court in a Criminal Revision had earlier set aside the order of conviction and sentence of the accused persons and directed re-hearing of the Criminal Appeal, can this Court quash the proceeding of the criminal case taking recourse to Section 482 of the Code of Criminal Procedure ? At the cost of repetition I may state here that there is no matrimonial link between the parties and they have settled their dispute. The wife has re-married and has been blessed with a female child in 2001 and it is also a fact that the order of conviction and sentence passed by the appellate Court in Criminal Appeal No. 55/91 on 4.10.93 have been set aside in Revision by this Court and now the Appeal is pending disposal before the appellate Court after taking evidence of Bhaskar Chandra Dash. An argument was advanced that the judgment of conviction and sentence passed by the trial Court merged with the judgment passed by the appellate Court and became final on the basis of the language of Section 393 of the Code of Criminal Procedure. I may indicate here that Section 430 of the Cr.P.C. corresponds to Section 393 of Cr.P.C. In this regard my attention was drawn to Paragraph-25 of the judgment of apex Court in the case of U.J.S. Chopra Vs. State of Bombay, , which is quoted below.

"The principle as to the finality of criminal judgments has also been invoked while considering this question. This principle has been recognized by this Court in Janardan Reddy and Others Vs. The State of Hyderabad and Others, (X), at p.225 where Fazal Ali J. observed :

It is true that there is no such thing as the principle of constructive "resjudicata" in a criminal case, but there is such a principle as finality of judgments, which applies to criminal as well as civil cases and is implicit in every system, wherein provisions are to be found for correcting errors in appeal or in revision. Section 430, Criminal P.C... has given express recognition to this principle of finality by providing that "Judgments and orders passed by ah Appellate Court upon appeal

shall be final, except in cases provided for in Section 417 and Chapter XXXII".

Section 417 relates to appeals on behalf of Government in cases of acquittal by any Court other than a High Court and Chapter XXXII relates to reference and revision which also are powers exercised by the High Court over the judgments or orders of inferior Courts, thus excluding from the purview of this exception all judgments and orders passed by the High Court as an Appellate Court.

Section 430 does not in terms give finality to the judgments of the High Court passed in exercise of its revisional jurisdiction, but the same principle would apply whether the High Court is exercising its appellate jurisdiction or its revisional jurisdiction, because in either case the High Court which is the highest Court of Appeal in the State would have pronounced its judgment, which judgment would replace the judgment of the lower Court and would be final.

Even while exercising its revisional powers u/s 439 the High Court exercises any of the powers conferred on a Court of Appeal by Sections 423: 427 and 428 and it is in effect an exercise of the appellate jurisdiction though exercised in the manner indicated therein. This principle of finality of criminal judgments therefore would equally apply when the High Court is exercising its revisional jurisdiction.

Once such a judgment has been pronounced by the High Court either in the exercise of its appellate or its revisional jurisdiction no review or revision can be entertained against that judgment and there is no provision in the Criminal Procedure Code which would enable even the High Court to review the same or to exercise revisional jurisdiction over the same.

The judgment of the High Court would replace that of the lower Court which would no longer be subsisting but would be replaced by the High Court judgment and thus it is only the High Court judgment which would be final and would have to be executed in accordance with law by the Courts below."

5. Relying upon the aforesaid judgment of the apex Court learned counsel for the petitioner submitted that no conviction and sentence is subsisting on the face of the judgment passed by this Court in Criminal Revision No. 508/93.

6. It was argued by the learned counsel for the opposite party No. 3 that in order to foresee the new life of opposite party No. 3 to be peaceful or unblemished, the informant prays that all those criminal proceedings, which arose out of her previous marital life, may be quashed. In this regard my attention was drawn to the decision of the apex Court in B.S. Joshi and Others Vs. State of Haryana and Another, , Paragraphs-2, 12, 13 and 14 of which are quoted below :-

"2. The question that falls for determination in the instant case is about the ambit of the inherent powers of the High Courts u/s 482, Code of Criminal Procedure (Code) read with Articles 226 and 227 of the Constitution of India to quash criminal proceedings. The scope and ambit of power u/s 482 has been examined by this Court in catena of earlier decisions but in the present case that

is required to be considered in relation to matrimonial disputes. The matrimonial disputes of the kind in the present case have been on considerable increase in recent times resulting in filing of complaints by the wife under Sections 498A and 406, IPC not only against the husband but his other family members also. When such matters are resolved either by wife agreeing to rejoin the matrimonial home or mutual separation of husband and wife and also mutual settlement of other pending disputes as a result whereof both sides approach the High Court and jointly pray for quashing of the criminal proceedings of the First Information Report or complaint filed by the wife under Sections 498A and 406, IPC, can the prayer be declined on the ground that since the offences are non-compoundable u/s 320 of the Code and, therefore, it is not permissible for the Court to quash the criminal proceedings or FIR or complaint.

12. The special features in such matrimonial matters are evident. It becomes the duty of the Court to encourage genuine settlements of matrimonial disputes.

13. xxx There are many other reasons which need not be mentioned here 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.

14. There is no doubt that the object of introducing Chapter XX-A containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counter productive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non- exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XXA of Indian Penal Code."

7. I do not disagree with the proposition of the learned counsel for the petitioner that in a case of this nature, all efforts should be made for encouraging genuine settlement of matrimonial dispute, but this case stands on a peculiar footing. Here is a case where the petitioner was before this Court in Criminal Revision No. 508/93, in which this Court set aside the order of conviction and sentence passed by the appellate Court in Criminal Appeal No. 55/91 and remanded it to the appellate Court for disposal of the said appeal afresh after taking the evidence of Bhaskar Chandra Dash and if necessary that of P.W.2, P.W.12 and P.W. 14 and such other witnesses as may be considered necessary in the opinion of the Court. Had it been remitted back to the trial Court the matter would have been different. The judgment passed by this Court in Criminal Revision 508/93 kept the appeal alive and pending and during pendency of the said appeal, this Court directed the appellate Court to examine certain witnesses and dispose of the

appeal thereafter. So it cannot be said that the order of conviction recorded by the trial Court does not exist. For all practicable purposes the appeal is pending and in my considered opinion, the appeal has to take a logical conclusion of its own. This being the position and in view of the judgment passed by this Court in Criminal Revision No. 508/93 reported in Tusar Kanti Swain and Another Vs. State of Orissa, , this Court is not inclined to quash the proceeding in Criminal Appeal No. 55/1991 arising out of the judgment and order of conviction passed by the Chief Judicial Magistrate, Puri in G.R. Case No. 1396/89 on 10.4.1991. However, the appellate Court is directed to conclude the Appeal No. 55/91 within a period of three months from the date of this order without giving liberal adjournment to either of the parties.