

(2024) 04 OHC CK 0107
In the Orissa High Court
Case No : CRLMC No. 397 Of 2024

Pratima Bisoyi @ Bishoi

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 15-04-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 161, 164, 482
Odisha Excise Act, 2008 — Section 363, 366, 376(2)(n)
Protection of Children from Sexual Offences Act, 2012 — Section 5, 6
Evidence Act, 1872 — Section 65B

Citation : (2024) 04 OHC CK 0107

Hon'ble Judges : S.S. Mishra, J

Bench : Single Bench

Advocate : Biplaba P.B. Bahali, P.K. Maharaj

Final Decision : Dismissed

Judgement

S.S. Mishra, J.

1. The petitioner Pratima Bisoyi @ Bishoi was the informant in Bamunigaon P.S. Case No.121 of 2023 for the offence under Section-363 IPC. On 17.09.2023, she had lodged a complaint, inter alia, stating as under:-

"On 15.09.2023 at about 11.00 AM, she had gone to jungle to collect fire wood, leaving her daughter namely Suity Bishoi aged about 14 years in her house. At about 4.00 PM she returned to house and saw that her daughter Suity was not in her house. She asked to the villagers about her daughter, but they denied. She searched for her daughter in nearby villages, but could not find out any clue. Her husband has been staying since one year outside of Odisha. Her daughter has not taken any mobile. She searched for two days to her daughter and today reported the matter at PS for taking necessary legal action."

2. On the basis of the aforementioned complaint, the F.I.R. was lodged against the unknown persons. The police took up the investigation and recorded the

statement of the witnesses under Section 161 Cr.P.C. The present petitioner also got her statement recorded under Section 161 Cr.P.C. In her improvised version, she has further added that one Dillip Patra of the village has been claiming to be in love relationship with her daughter and approached her with a marriage proposal. Since Dillip Patra belongs to a different caste, she straightaway declined his proposal. She further stated that Dillip Patra, in order to marry her daughter, has kidnapped her minor daughter. The police also recorded the statement of many villagers under Section 161 Cr.P.C. All of them stated that Dillip Patra has been telling them that he is in love relationship with Sweety Bishoi (victim) and he intended to marry her.

3. After 14 days, the victim girl was recovered by the police. The police claimed that she was coming back to the house and in her way she was apprehended.

4. On 29.09.2023, the statement of the victim Sweety Bishoi was recorded under Section 161 Cr.P.C. In her statement, she has stated that she has been constantly beaten by her mother on false pretext, therefore, she was upset. On the fateful day, when her mother went to collect wood from the jungle, she had escaped from the house. Out of anger, she went to her friend, Laxmi Patra's house and she stayed there for 14 days. When Laxmi Patra came to know regarding registration of the case by the mother of the victim girl, she asked the victim girl to go back to her house. While she was returning, on the way, the police apprehended her. She specifically stated that nobody had kidnapped her and she has no love relationship with anyone.

5. On the same day, her statement under Section-164 Cr.P.C. was also recorded by the learned Magistrate. In her statement under Section 164 Cr.P.C., she has stated, inter alia, as follows:-

" On 15.09.2023, my mother scolded and beat me saying that I am not reading and not going to School. Then my mother went to the jungle to collect wood. At about 1 PM, by informing my grand-mother, I went to the house of my friend Laxmi Patra. Laxmi Patra came to know that my mother has lodged a case that I am missing. So, she told me to go away from her house. So, today morning while I came out from her house, police apprehended me and took me to the Police Station. Nobody has kidnapped me nor had I gone with anybody. I have no relation with any boy."

6. On the basis of the aforementioned materials collected by the police, the charge sheet was filed on 26.11.2023. Dillip Patra was made the sole accused in the case for allegedly having committed the offences under Sections-363/366 IPC.

7. Learned Court below took cognizance of the offences vide its order dated 02.12.2023. Subsequently, the charges were framed by the learned Court below under Sections 363/366 IPC against the accused.

8. The petitioner is aggrieved. Her grievance is that despite the fact that a clear

case under Section 376(2)(n) IPC r/w Sections-5/6 of the POCSO Act is made out against the accused persons, Police has deliberately left out those offences in the charge sheet. Therefore, she moved an application before the learned Court below even before the charge sheet was laid down by the police for adding those offences.

9. Learned J.M.F.C., Daringibadi vide its order dated 07.10.2023 has rejected the application, inter alia, stating as follows:-

"This case record is again put up as the Ld. Adv. Sri Naresh Kumar Padhy files vakalatnama which is duly executed by the informant of this case Smt. Pratima Bisoi, W/o-Bipra Bisoi of village-Meramaha, P.S.-Bamunigaon, Dist.- Kandhamal along with a petition and the vakalatnama is accepted. The copy of the petition is not served on the other side. Perused the prayer of the complainant and it is seen that the complainant prays on her petition before this Court to give direction to the I.O. of this case to turn the case from U/s- 363/366 IPC to U/s- 363/366/376(2)(n) IPC and R.W. Sec-5/6 of POCSO Act.

It is seen that such prayer is neither raised from the prosecution side by the Ld. APPs or nor from the I.O. of this case. However the case is in its preliminary stage, the Charge sheet has not been submitted in this case and the investigation is going on. Hence considering the fact and circumstances of this case, this Court feels that, this petition is non maintainable at this stage."

10. Since the investigation in the present case was on by then, learned Court below has rightly rejected the prayer of the petitioner. However, subsequently, on 26.11.2023, a detailed charge sheet was filed against the accused for allegedly having committed the offences under Sections-363/366 IPC.

11. Learned Court below vide order dated 02.12.2023 has taken cognizance of the offences under Sections-363/366 IPC against the accused person, the cognizance order reads as under:

"This case record is put up today on receipt of Charge Sheet vide C.S. No.141, dtd. 26.11.2023 u/s-363/366 IPC from the I.O. against the accused person namely Dillip Patra (24), S/O-Gandhi Patra of village- Meramaha, P.S.- Bamunigaon, Dist.-Kandhamal along with connected documents i.e. C.D.-1 to C.D.-X -11 sheets, S CD-03 sheets, statements recorded u/s- 161 Cr.PC – 11 sheets, CDF-01 sheet, Rescu list-01 sheet, Medico legal report-09 sheets, Command Certificate-01 sheet, Requisition -04 sheets, U/s-65-B I.E. Act-01 sheet, Others-07 sheets. Perused all the connected documents. It appears that there are sufficient materials on record and a prima facie case to proceed against the accused person namely Dillip Patra (24), S/O. Gandhi Patra of village-Meramaha, P.S.- Bamunigaon, Dist.- Kandhamal u/s. 363/366 IPC. Hence cognizance of the offence u/s. 363/366 IPC is taken against the accused person. The accused person is in jail custody. Accordingly issue requisition for the production of the accused persons fixing date 04.12.2023 for his appearance."

12. The matter was again listed before the Court below. Learned Asst. Sessions Judge, Baliguda vide its order dated 22.12.2023 framed the formal charges against the petitioner under Sections-363/366 IPC.

13. The petitioner/informant in the present case has also raised grievance before the Investigating Agency seeking for de novo investigation and inclusion of the offence under Section-376(2)(n) IPC r/w Sections-5/6 of the POCSO Act. Since no affirmative result yielded from her all out efforts, she has preferred the present petition, inter alia, praying as follows:

"(i) to set aside the Charge Sheet No.141 of 2023 dated 26.11.2023 under Annexure-10 in connection with Bamunigaon P.S. Case No.121 of 2023 corresponding to S.T. Case No.63 of 2023 pending in the Court of Asst. Sessions Judge, Baliguda;

(ii) direct a de novo investigation in connection with Bamunigaon P.S. Case No.121 of 2023 by a fresh team of investigators to be headed by a senior police officer of the State consisting of efficient personnel well conversant with use of modern investigation technology also and/or direct to any independent investigating agency (SIT Probe) to investigate into the matter. No officer who was part of the investigating team leading to the charge sheet shall be part of the team conducting de novo investigation."

14. To press the aforementioned prayers, Mr. Bahali, learned counsel for the petitioner has relied upon series of judgments which are as follows:-

(1) "Neetu Kumar Nagaich vs. The State of Rajasthan and others reported in AIR 2020 SC 5267.

(2) Kashmeri Devi vs. Delhi Administration reported in (1988) Supp. SCC 482.

(3) Babubhai vs. State of Gujarat & others reported in (2010) 12 SCC 254.

(4) Bharati Tamang vs. Union of India & others reported in (2013) 15 SCC 578.

(5) Pooja Pal vs. Union of India & others reported in (2016) 3 SCC 135.

(6) Dharam Pal vs. State of Haryana & others reported in (2016) 4 SCC 160.

(7) State of West Bengal & others vs. Committee for Protection of Democratic Rights, West Bengal & others, reported in (2010) 3 SCC 571.

(8) Sheo Nandan Paswan vs. State of Bihar & others reported in AIR 1987 SC 877.

(9) A.R. Antulay vs. R.S. Nayak reported in AIR 1988 SC 1531.

(10) Bimal Kishore Parimal & others vs. Commissioner of Wealth Tax reported in AIR 2018 SC 481.

15. By extensively relying upon the aforementioned judgments, Mr. Bahali, learned counsel has argued that in the facts scenario of the present case, a de

novo or a re-investigation is an essentiality. He has emphasized the power of this Court under Section-482 Cr.P.C. for a direction either to alter the charges framed against the accused or to direct for a de novo investigation.

16. Mr. P.K. Maharaj, learned Addl. Standing Counsel for the State opposed the prayer vehemently and argued that all the judgments cited by Mr. Bahali, learned counsel are distinguishable on facts as well as law vis-à-vis the present case. He submitted that theoretically Mr. Bahali, learned counsel may be correct that this Court has inherent jurisdiction to intervene in the matter, but the facts germinating from the record in the present case are such that there is not an iota of evidence coming forth to invoke either the provision of Section-376(2)(n) IPC or Sections-5/6 of the POCSO Act. It's only the informant who has been suspecting that sexual assault might have been inflicted upon her daughter sans any oral or documentary evidence worth the name illuminating from record.

17. I have given a careful consideration to the submissions made by learned counsels for both the parties and I have also perused the evidence on record.

18. The petitioner is the informant and the mother of the victim. She is aggrieved by the non-invocation to the grievous offences under Section-376(2)(n) IPC and Sections-5/6 of the POCSO Act. After investigation, charge sheet has been submitted for the alleged offences under Sections-363/366 IPC against the accused. On the materials available on record, the charges have already been framed against the petitioner for the said offences by the competent Court. At the threshold, it is apparent that the petitioner/ informant has not availed appropriate remedy under the Code at the stage of Court taking cognizance or after framing of charges.

Learned trial Court has rightly rejected the application of the petitioner, inter alia, stating that the grievances ventilated in the application has not been routed through the prosecution. In fact, Section-301 Cr.P.C. gives limited scope for the informant to participate in the criminal prosecution against the accused.

19. On facts, it is eminent that the victim in her statement recorded under Section-164 Cr.P.C. has not uttered a single word regarding any sexual assault being committed by the accused on her. Similarly, all the independent witnesses gave the statement before the police under Section-161 Cr.P.C., inter alia, stating that the accused was telling them that he has love affair with the victim and he intended to marry her. However, the same was declined by the mother of the victim namely the informant, as the accused is from a different caste. None of the witnesses have whispered about any sexual assault being committed by the accused. There is no medical evidence as well to support the claim of the informant. Therefore, the learned trial Court has rightly taken cognizance for the offences under Sections-363/366 IPC and subsequently the charges were also framed for the said offences against the accused. Needless to say that during trial if any material comes on record suggesting/attracting any other offence against the accused that would be dealt with by the learned Trial Court in

accordance with the procedure contemplated under the criminal code.

20. In the foregoing sequence of event, no fault could be found from the impugned order. Therefore, in so far as the first prayer of the petitioner in the present petition is concerned, I find no merit in the same.

21. In so far as the second prayer of the petitioner for de novo investigation is concerned, the same is not entertainable at the instance of the informant and in the absence of any evidence even slightly tilting in favour of the contentions raised by the petitioner. From the record, it appears that the police have meticulously investigated the case on the strength of the statement of the victim under Section 164 Cr.P.C and statements of independent witness under Section 161 Cr.P.C. The informant finding out the contradiction in the statement of the victim vis-à-vis some of the witnesses are trying to suggest that the investigation is tainted. However, learned trial Court at the stage of framing the charges has evaluated every aspect of it and framed the charges under Sections-363/366 IPC and I am unable to find any justified reason to negate the same. Therefore, the second prayer of the petitioner in the present petition also lacks merit.

22. In the foregoing circumstances, the petition fails. Accordingly, the CRLMC is dismissed.

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