
(2006) 07 OHC CK 0023
In the Orissa High Court
Case No : CRLMC No. 1018 of 2006

Pratima Gouduni

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 21-07-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 397(3), 482
Penal Code, 1860 (IPC) — Section 366, 376

Citation : (2006) 1 OLR 260 Supp

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

Bench : Single Bench

Advocate : Arijeet Mishra, T.K. Mishra and B. Nayak, for the Appellant; Addl. Standing Counsel for Opp. Party No. 1, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—Circumventing the bar imposed u/s 397(3) of the Code of Criminal Procedure the Petitioner, who had filed a revision before the Ad hoc Addl. Sessions Judge, Jeypore, which was dismissed by judgment dt.17.6.2004, has approached this Court once again assailing the order dtd. 5.3.2002 passed by learned S.D.J.M., Jeypore in I.C.C. No. 26/2000.

2. Bereft of unnecessary details, the short facts necessary for adjudication are that the Petitioner, who is a married lady, filed a complaint petition before the learned S.D.J.M., Jeypore, which was registered as I.C.C. No. 26/2000, inter alia, alleging commission of offences under Sections 366 and 376 of the I.P.C. According to the Petitioner, opp. party No. 2 was a friend of her husband. He was a frequent visitor to her house and in the year 1999 at about 11 P.M. when her husband was absent he came to her house, committed sexual intercourse with her against their will by stupefying her administering some unwholesome substance. It was further alleged in the complaint petition that thereafter also on several occasions, he had sexual intercourse with the Petitioner. When the matter came to the knowledge of her husband, he drove her out of his house and both

the Petitioner and opp.party No. 2 stayed together for quite some time in a rented house of one Sunadhar Lohara, but then all of a sudden he deserted her. Thereafter the complaint petition was filed.

3. Learned S.D.J.M., Jeypore recorded the statement of the Petitioner as well as that of the witnesses produced by her u/s 202 of the Code of Criminal Procedure. One of the witness was the husband of the Petitioner and the other was the person in whose house the Petitioner stayed with opp. party No. 2. After considering the statements and other materials available, learned Magistrate came to the conclusion that the basic ingredients of the offences alleged against the Petitioner were not satisfied. Consequently the complaint case was dismissed.

4. Being aggrieved by the said order dtd. 5.3.2002 the Petitioner preferred Revision before the Sessions Court, which was registered as CrI. Revision No. 34/2004 and was heard by learned Ad hoc Addl. Sessions Judge, Jeypore. Before the revisional Court, the Petitioner relying upon the decision of this Court in the case of Kishore Sahu v. State of Orissa reported in (2000) 18 OCR 417 contended that as the co-habitation on the first date was done forcibly, the ingredients of Section 376 I.P.C. were satisfied. According to the learned Counsel for the Petitioner if the co-habitation at the first instance was a forcible act, then other subsequent cohabitation lost all significance and under such eventuality the offence u/s 376 I.P.C. was established. Learned Ad hoc Addl. Sessions Judge considered the said submission and after careful perusal of the complaint petition and the initial statement of the Petitioner came to the conclusion that there was variance between the allegations made in the complaint petition and the initial statement made by the Petitioner before the Magistrate, inasmuch as though in the complaint petition it had been stated that opp. party No. 2 came to the house of the Petitioner and stupefying her by administering some unwholesome substance had sexual intercourse with her against her will, but then in the initial statement it had been stated that on the first occasion opp. party No. 2 come the house of the Petitioner at 11 P.M., pulled out her sari and forcibly had sexual Intercourse with her. Considering the contradictions in her statement and the statements of other witnesses examined by the Petitioner, the Sessions Court came to the conclusion that the basic ingredients of Section 376 of the I.P.C. and/or Section 366 of the I.P.C. were not satisfied and consequently dismissed the revision. As stated earlier by passing the bar imposed u/s 397(3) of Code of Criminal Procedure the Petitioner has approached this Court invoking inherent jurisdiction.

5. Law is well settled that while exercising inherent jurisdiction u/s 482 of Code of Criminal Procedure, this Court has to be very careful and only if satisfied that there is gross miscarriage of justice can interfere in the matter. Even otherwise, law is well settled that when a specific bar has been imposed to invoke such jurisdiction, this Court should be slow to bypass the said bar and exercise its inherent jurisdiction. On the basis of the touch stone of the aforesaid settled position of law, this Court in order to examine as to whether there has been

gross miscarriage of justice or not, went through the F.I.R., the complaint petition, initial statement of Petitioner and that of other witnesses examined u/s 202 of Code of Criminal Procedure and the orders of both the Courts below. It is pertinent to mention at this stage that the Crl. Revision filed before the Sessions Court was dismissed in June, 2004; whereas this CRLMC was filed on 24th April, 2006, i.e., more than one and half years after. The Petitioner has not explained the delay. This Court also feels that entertaining a CRLMC after lapse of almost two year is not justified.

6. Even otherwise as would be evident from the F.I.R. (Annexure-1) the complaint petition and the initial statements, the Petitioner, who is a married, matured and sensible lady aged about 25 years, developed extra marital relationship with opp. party No. 2 in the year 1999. Both opp. party No. 2 and the Petitioner even ventured to have co-habitation in the house of the Petitioner's husband for some days and thereafter when the Petitioner's husband came to know such things it is alleged he drove her out. It appears that the Petitioner and opp. party No. 2 thereafter stayed in a house together and continued their affairs for quite some years. Only thereafter a complaint petition was filed. That apart there is also significant contradiction in the averments made in the F.I.R. (Annexure-1), the complaint petition and the initial statements inasmuch, as there is no whisper to the effect that at the first instance the accused co-habited by applying any force. At the other hand the facts narrated in the F.I.R. (Annexure-1), and the complaint petition reveal that at 11 P.M. the Petitioner, a married lady, entertained opp.party No. 2 at her house when her husband was absent. She also admits that she had extra marital relationship with opp. party No. 2 that night and also thereafter and there was frequent co-habitation between the parties in her matrimonial house, till it was detected by her husband, and she was driven out. The facts and circumstances of the present case are thus quite different from the case of Kishore Sahu (supra).

7. In view of the aforesaid facts and circumstances, this Court finds that the learned Magistrate has not committed any illegality. The Sessions Court has taken into consideration all the facts and circumstances and the order passed by it is just, proper and in consonance with the materials available. This CRLMC preferred after lapse of almost two years has no merit and is accordingly dismissed.