
(2000) 08 OHC CK 0017

In the Orissa High Court

Case No : Criminal Miscellaneous Case No's. 4179 of 1998 and 5101 of 1999

Sahan Singh and Samarendra Singh and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 02-08-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 376(2), 506

Citation : (2000) 2 OLR 314

Hon'ble Judges : P.K. Patra, J

Bench : Single Bench

Advocate : D.P. Dhal, for the Appellant; S. Sen and Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Patra, J.—The petitioners in both these cases have prayed for quashing of the criminal proceedings in G.R. Case No. 256 of 1998 arising out of Raibania P.S. Case No. 36 of 1998 on the file of the J.M.F.C, Jaleswar u/s 482 of the Code of Criminal Procedure, 1973. Both the cases were heard together and this order disposes of both the matters.

2. Petitioner in Cri. Misc. Case No. 4179 of 1998, namely, Sahan Singh, and the three petitioners in Cri. Misc. Case No. 5101 of 1999 are the accused persons in the aforesaid case under Sections. 376(2)(g) and 506 of the Indian Penal Code for alleged commission of gang rape on opposite party No. 2-Basanti Singh on 11.8.1998 at about 6 p.m. while she was returning from weekly market, by lifting her on a bicycle to a nearby field. On the oral report of opposite party No. 2, the O.I.C. of Raibania Police Station registered the case and took up investigation. It is stated by the petitioners that petitioner Sahan Singh and opposite party No. 2 got married on 9.9.1998 in support of which they have sworn affidavits on the same date. According to them as per their caste custom, opposite party No. 2 was dragged by Sahan Singh and his friends on 18.8.1998

and put vermilion and garland on her and the marriage was completed but the parents of petitioner Sahan Singh did not allow opposite party No. 2 to enter inside their house for which she came back from the house of petitioner Sahan Singh and at the instigation of the enemies of petitioner Sahan Singh, opposite party No. 2 filed the present false case against the four petitioners. It is stated that at the intervention of gentlemen, the matter was resolved on 9.9.1998 and petitioner Sahan Singh and opposite party No. 2 have sworn affidavits on that date and have been residing in one house as husband and wife. Since opposite party No. 2 was aged about twenty years and voluntarily resided with petitioner Sahan Singh as his legally married wife, further continuance of the criminal proceeding against the petitioners would be an abuse of the process of law. Hence the petitioners have prayed for quashing the proceedings of the aforesaid G.R. Case is exercise of inherent powers of this Court u/s 482, Cr.P.C.

3. Mr. Dhal, learned counsel for the petitioners and Mr. Sen learned counsel for opposite party No. 2 and the learned Addl. Standing Counsel for the State were heard at length. While learned counsel for the petitioners urged for quashing of the criminal proceedings contending that opposite party No. 2 has since married petitioner Sahan Singh and has been residing with him as his legally married wife, learned Addl. Standing Counsel for the State vehemently refuted the same contending that the veracity of the affidavit filed by opposite party No. 2 cannot be tested without confronting the same to her and that the offence u/s 376(2) (g). IPC is not compoundable and is heinous in nature.

4. Learned counsel for the petitioners placed reliance on the following decisions in support of his contention. In the case of AIR 1988 2111 (SC) it was held by the apex Court that though the offence u/s 307, IPC is not compoundable u/s 320, Cr.P.C. it would be proper for the trial Court to permit the parties to compound the offence in the peculiar circumstances of the case where one of the accused was a lawyer practicing in lower Court and the counter case arising out of the same transaction had already been compounded.

In the case of Sudam Charan Barik v. State and Ors., reported in (1994) 7 OCR 207, the same view has been taken by this Court.

In the case of Sudhakar Naik and ors. v. State and ors., reported in (1996) 11 OCR 77, it has been held by this Court :

"It is well settled that the power u/s 482 of the Code has to be exercised sparingly depending upon the facts and circumstances of each case and no strait jacket formula can be laid down for exercise of such power. The power u/s 482 can be exercised by the High Court to prevent abuse of the process of any Court or to secure the ends of justice. To restrict the scope of Section 482 within the narrow confines of Section 320 (1) or (2) may result in manifest injustice in many cases."

In the case of Hari Mohapatra and Anr. v. State of Orissa and Ors., reported in (1996) 10 OCR 533, the Magistrate did not permit compounding of the offences

under Sections 376/511. IPC although affidavits were filed by the alleged victim and her mother indicating their reluctance to proceed further in the matter and in the meanwhile six years elapsed from the date of the alleged incident. It was held by this Court that it would be counter productive to insist upon a reluctant witness to depose about a traumatic incident after a long lapse of time and it would not be in the interest of justice to rake up matters buried by the parties and the proceedings were quashed.

5. But the facts and circumstances of this case are different from the facts and circumstances of the cases referred to above. In the present case, the alleged gang rape was committed on 18.8.1998 at 6 p.m. It is stated by the petitioners that after putting vermilion and garland on opposite party No. 2, petitioner Sahan Singh married her as per the caste custom, but the parents of petitioner Sahan Singh did not allow opposite party No. 2 to enter inside their house, for which opposite party No. 2 lodged FIR before the I.O. falsely implicating the four petitioners for alleged rape on her. Subsequently at the intervention of gentlemen of the village the matter has been resolved on 9.9.1998 on which date opposite party No.2 and petitioner Sahan Singh swore affidavits which have been filed before this Court. It cannot be believed for a moment that opposite party No. 2 would have lodged a false report implicating the petitioners with alleged gang-rape on her after being refused her entry inside the house of petitioner Sahan Singh. There is no scope for this Court to ascertain the truth or falsity of the affidavit stated to have been sworn by opposite party No. 2, which can be very well determined by the trial Court. If such an affidavit is given weightage and criminal proceedings involving heinous crimes like gang rape are quashed, then there would be flood gate for petitions u/s 482, Cr.P.C. for quashing criminal proceedings involving heinous offences. The power u/s 482, Cr.P.C. is not to be exercised capriciously or arbitrarily, but is to be exercised ex debito justitiae to do the real and substantial justice for the administration of which the Courts exist. The powers u/s 482, Cr.P.C. are for the purpose of serving the ends of justice. Further when there is no miscarriage of justice, the inherent powers under this section should not be exercised. Such powers are not to be lightly exercised to defeat and delay the normal procedure. They are to be exercised within their four corners and not so as to interfere with the normal functioning of the Courts.

7. In view of the discussions made above, the decisions relied upon by the learned counsel for the petitioners are of no help to the petitioners. Both the Criminal Misc. Cases are found to be devoid of merit and are liable to be dismissed.

8. In the result, both the Criminal Misc. Cases are dismissed. The Court below is directed to proceed with the case as expeditiously as possible.