

(2005) 03 OHC CK 0010
In the Orissa High Court
Case No : TRPCRL No. 23 of 2003

Sanjukta Patra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 29-03-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 407
Dowry Prohibition Act, 1961 — Section 4, 6
Hindu Marriage Act, 1955 — Section 13
Penal Code, 1860 (IPC) — Section 294, 34, 498A

Citation : (2005) CLT 449 (Suppl CrI) : (2005) OLR 449 (Suppl CrI)

Hon'ble Judges : R.N. Biswal, J

Bench : Single Bench

Advocate : R.N. Mohanty, M.K. Panda, N.R. Routray, A. Patnaik and P.K. Jena, for the Appellant; P.K. Sahoo, S.S. Mallik, U.C. Dora, H.P. Ojha, R.K. Nayak, P.C. Jena, S.K. Dash, S.R. Mohanty and S.P. Dash for Opp. party No. 3, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Biswal, J.—The Petitioner has filed this petition u/s 407 Code of Criminal Procedure to transfer G.R. Case No. 205 of 2003 from the file of learned S.D.J.M., Bhubaneswar to the file of any competent Criminal Court functioning at Cuttack.

2. It is averred in the petition that the opposite party No. 2 suppressing his first marriage with opposite party No. 3 married the Petitioner, first on exchange of garlands in Bimala temple at Puri. Thereafter they filed an application on 5.5.2001 before the Special Marriage Officer, Bhubaneswar for their marriage, but it could not be materialized at the instance of opposite party No. 2. She was threatened by opposite party No. 2 with dire consequences unless she withdraws the application. So, the Petitioner lodged an F.I.R. before Mahila P.S. Cuttack which was registered as Mahila P.S. case No. 16 of 2001 wherein the opposite party No. 1 was arrested and forwarded to Court. After the bail petition of the

opp. party was rejected by the learned S.D.J.M. as well as by the Sessions Judge, Cuttack, he approached this Court for bail vide Criminal Misc. Case No. 6654 of 2004. Since this Court was not inclined to release him on bail he along with his family members gave a proposal for his marriage with the Petitioner. O.P. No. 2 was released on interim bail on the condition that he would marry the Petitioner. Opposite party Nos. 2 and 3 filed a joint petition u/s 13(b) of the Hindu Marriage Act for mutual divorce before the Judge, Family Court, Cuttack vide C.P. No. 492 of 2001 which was allowed on 18.10.2001. Thereafter, the Petitioner and opposite party No. 2 applied for their marriage u/s 13 of the Special Marriage Act and the marriage was performed before the Marriage Officer, Cuttack on 23.11.2001 whereafter the interim order of bail was made absolute. The newly married couple resided in the official quarters of opposite party No. 2 at Bhubaneswar. The criminal case arising out of Mahila P.S. Case No. 16 of 2001 was ended in acquittal, as the Petitioner did not take any interest in the case. After-being acquitted the opposite party No. 2 again brought opposite party No. 3 to his Official quarters where both of them assaulted the Petitioner. Opposite party No. 2 forced the Petitioner to bring Rs. 1,00,000/- from her father, but, when she could not comply it she was driven out from the matrimonial home. So she again lodged a report before the Mahila P.S. Bhubaneswar which was registered as P.S. case No. 2 of 2003 for the offence under Sections 498-A/294/34 I.P.C. read with Sections 4 and 6 of the D.P. Act against opp. Party Nos. 2 and 3 corresponding to G.R. Case No. 205 of 2003 pending in the Court of S.D.J.M., Bhubaneswar.

3. In the meanwhile, opposite party No. 2 filed a civil proceeding bearing No. 794 of 2002 u/s 13 of the Hindu Marriage Act before the Judge, Family Court, Cuttack against the Petitioner for a decree of divorce by cancelling the marriage certificate granted by the Marriage Officer.

4. It is further alleged in the petition that the Petitioner has been receiving threat calls over phone at her office in Central Administrative Tribunal, Cuttack Bench from opposite party Nos. 2 and 3 with dire consequences if at all she would depose against them. They have been threatening the father and brother of the Petitioner, who are charge sheet witnesses in the G.R. case with dire consequent, if they would depose against them. Opposite party No. 2 who works as General Asst Programme co-coordinator in Doordarshan Kendra, Bhubaneswar, influenced his staff to threaten her not to depose against him and opposite party No. 3. They have sent her two anonymous threatening letters stamped on 4.6.2003 and 7.6.2003 marked as Annexure-2 and 3. Soon after receipt of the above two anonymous letters, Petitioner brought this fact to the notice of the Inspector, HRPC on 10.6.2003 who seized the same on that date, but did not take any step. Furthermore, one fax message was also sent by the Staff of Doordarshan Kendra, Bhubaneswar to the Hon''ble member (judicial), Central Administrative Tribunal, Cuttack Bench, Cuttack, requesting the Hon''ble member to advise the Petitioner to withdraw the case instituted against opposite party Nos. 2 and 3 or else she would be killed. The Hon''ble Member directed his office to intimate this

fact to the Superintendent of Police Cuttack for necessary action. Accordingly it is learnt that the fax message was sent to Superintendent of Police, Cuttack on 2.9.2003. So as per the petition, for ends of justice G.R. Case No. 205 of 2003 pending on the file of S.D.J.M., Bhubaneswar should be transferred to the file of any competent criminal Court at Cuttack.

5. Opposite party Nos. 2 and 3 filed separate counter affidavits. Opposite party No. 2 in his counter affidavit stated that he had not given any threat call either to the Petitioner or any of her relatives. The so-called threat letters (annexures-2 and 3) have not been sent by him. He was assaulted by the Petitioner on 5.5.2004 in the Court premises of the Judge, Family Court, Cuttack when he had gone there to attend the divorce case. He lodged a report in this regard but when police did not register any case he filed W.P. (C) No. 93 of 2004 before this Court, which is sub-judice. As a matter of fact he is apprehending danger to his life from the Petitioner at Cuttack. It is the further case of Opp. Party No. 2 that Petitioner is the accused in I.C.C. No. 2330 of 2003 pending before the S.D.J.M., Bhubaneswar. Under such circumstances, he prays to reject the petition for transfer of the G.R. Case from the file of the S.D.J.M., Bhubaneswar.

6. Opposite party No. 3 in her separate counter affidavit denied to have threatened or assaulted the Petitioner at any point of time and almost adopted the counter affidavit of opp. No. 2 and pressed to dismiss the case.

7. Learned Counsel for the Petitioner submitted that fair trial is the sine-qua-non of criminal justice. The Petitioner and his father and brother, who are charge sheet witnesses, apprehend danger to their lives if they attend the Court at Bhubaneswar. Annexure 2 and 3 show that opposite party Nos. 2 and 3 and the staff of opposite party No. 2 are bent upon to physically assault the Petitioner and her father and brother if they depose against opposite party Nos. 2 and 3 before the Court of S.D.J.M. at Bhubaneswar. So, they can not freely depose against them at Bhubaneswar. Moreover, the Petitioner and her father and brother resided at Cuttack. So, under such situation G.R. Case No. 205 of 2003 should be transferred to any criminal Court at Cuttack having jurisdiction to try the same.

8. On the other hand learned Counsel appearing for the opposite party Nos. 2 and 3 submits that Annexure-2 and 3 have been manufactured by the Petitioner in order to file the petition u/s 407 Code of Criminal Procedure before this Court and get the aforesaid G.R. Case transferred to Cuttack. He further submitted that Opposite party Nos. 2 and 3 apprehend that if they come to Cuttack in the event of transfer of the aforesaid case there, the Petitioner and his family members would assault them. Hence he pressed to reject the petition.

9. Annexure-2, showing as if sent by the Karmachari staff to the Petitioner reflects that they would murder her before the trial commences in the criminal case and get opposite party Nos. 2 and 3 acquitted by adducing false and fabricating evidence. Annexure-3 is an anonymous letter addressed to the

Petitioner reflecting that if she does not withdraw the aforesaid criminal case and comes to Bhubaneswar to give evidence, the staff of Doordarshan Kendra would kill her.

10. As per the petition the copy of these letters (Annexure 2 and 3) were made over to the police but no action was taken thereon. Similarly no action was taken by the police on the fax message sent to the Hon'ble Member (Judicial), Central Administrative Tribunal. Neither of the letters bears any signature. Letters of these sorts can easily be engineered. As it appears since police personnel did not consider these letters to be genuine, they did not take any action thereon. Section 177 Code of Criminal Procedure stipulates that every offence shall ordinarily be enquired into and tried by the Court within whose local jurisdiction it was committed. Unless there are good grounds normally the case should not be transferred to any other Court. Admittedly, in the present case the offence was allegedly committed within the local jurisdiction of S.D.J.M., Bhubaneswar. Moreover, opposite party Nos. 2 and 3 are the accused in the criminal case sought to be transferred. Convenient of the accused has to be taken care of than that of the complainant while considering a petition u/s 407 Code of Criminal Procedure Further, one complaint case is pending against the Petitioner at Bhubaneswar where she is required to go. If she does not apprehend danger to go to Bhubaneswar and attend the Court of S.D.J.M. in the complaint case, there is no reason why she would apprehend danger to attend the same Court in the case sought to be transferred.

In my view there is no good ground for transfer of G.R. Case No. 205 of 2003 from Bhubaneswar to Cuttack. As such the petition u/s 407 Code of Criminal Procedure is rejected.

The TRPCRL stands dismissed accordingly.