

(2005) 05 OHC CK 0018
In the Orissa High Court
Case No : CRLMC No. 898 of 2004

Sasanka alias Susanta Karmakar and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 04-05-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 294, 323, 34, 379, 406

Citation : (2005) 3 ALT(Cri) 28 : (2005) 100 CLT 523 : (2005) 2 OLR 155

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Advocate : R.K. Nayak, P.C. Jena, A.K. Sahu and A.K. Jena, for the Appellant;
Addl. Standing Counsel for O.P. No. 1 and B. Tripathy and J.B. Rout for O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

A.K. Parichha, J.—This is an application u/s 482 of the Code of Criminal Procedure (in short, "Cr.P.C.") for quashing of the cognizance order passed by the learned S.D.J.M. (S), Cuttack in G.R.Case No. 1522 of 1999.

Basing on an F.I.R. lodged by opp. party No. 2, Lalbag, P.S.Case No. 214 of 1999 was registered and after investigation in that case charge sheet was submitted for offences under Sections 436, 294, 506, 427, 379, 323 and 34 of the Indian Penal Code (in short, "I.P.C."). On perusing the charge sheet and the materials produced by the prosecution learned S.D.J.M. (S), Cuttack by order dated 6.5.2002 took cognizance of the above noted offences and directed issue of process against the petitioners. The present application has been filed for quashing the said order of cognizance.

2. The first submission of Mr. R.K. Nayak, learned counsel for the petitioner is that the materials produced by the prosecution do not reveal prima facie case for the offences under Sections 436, 294, 506, 427, 379, 323/34, IPC, but the learned S.D.J.M. (S), Cuttack without applying his mind mechanically took

cognizance of the offences. His second submission is that the alleged incident arose out of a land dispute between the parties but that civil dispute has now been resolved between them and a compromise decree has also been passed in T.S.No. 341 of 1999 by the learned Civil Judge (S.D.), 1st Court, Cuttack and in terms of that compromise, the parties desire discontinuance of G.R.Case No. 1522 of 1999. Learned counsel submits that in that background continuance of G.R.Case No. 1522 of 1999 of the Court of learned S.D.J.M. (S), Cuttack will be abuse of process of the Court and will unnecessarily cause rapture in the cordial relation now prevailing between the parties. He submits that in the best interest of every one the impugned order of cognizance should be quashed.

3. Mr. Choudhury, learned Addl. Standing Counsel objects to the prayer of the petitioners indicating that clear prima facie case for the alleged offences is made out from the materials available in the case diary. He submits that some of the offences alleged are non-compoundable in nature and so even if the parties have entered into a compromise, this Court cannot invoke the power u/s 482, Cr.P.C. to give effect to that compromise in the guise of quashing the cognizance.

4. Opp. party No. 2 made allegations in the F.I.R. that the petitioners set fire to his house, assaulted him and his son, committed theft of articles from his house, abused them in obscene language in public place and threatened them with dire consequences. The statements of the informant, his son and some witnesses are there to support these allegations. So, there is virtually no scope to accept the first contention that there is no prima facie case for the offences under Sections 436, 294, 506, 427, 379, 323/34, IPC.

5. The other plea of the petitioners is that a compromise has been effected between the parties and now the parties are living with cordial terms with each other and are not at all interested in continuance of the G.R.Case No. 1522 of 1999. Opp. Party No. 2 has filed an affidavit indicating therein that the incident arose out of a civil dispute and that the said dispute has been resolved and a compromise decree has been passed in T.S.No. 341 of 1999 of the Court of learned Civil Judge (SD), 1st Court, Cuttack and one of the terms of the compromise is that the parties would take all steps for discontinuance of proceeding of G.R.Case No. 1522 of 1999. From the affidavit and from the submission of the learned counsel of opp. party No. 2 it is apparent that the parties have amicably settled the dispute and are living in cordial term with each other. Now the question is whether the proceeding of G.R.Case No. 1522 of 1999 involving some non-compoundable offences can be quashed basing on the above said compromise between the parties. In the case of B.S.Joshi and Ors. v. State of Haryana and Anr. reported in (2003) 25 OCR (SC) 99 an identical question was raised. There the wife had filed criminal complaint against the husband alleging offences under Sections 498 and 406, IPC. But the parties subsequently settled their dispute and the wife-complainant prayed for quashing of the FIR. The High Court refused to exercise inherent power to quash the proceeding on the ground that Section 320, Cr.P.C. is a bar to exercise such inherent powers. The apex

Court disagreed with the view taken by the High Court and held that when quashing of proceeding is necessary for the purpose of securing ends of justice, Section 320, Cr.P.C. cannot stand as a bar. It was also observed that when chance of conviction is bleak the Court can proceed to quash the proceeding taking into consideration the special facts of the case. In the cases of Raju Pradhan and Ors. v. The State and Anr. 2003 (Supp.) OLR 960 : (2003) 26 OCR 224; Bhabani Prasad Gochhayat alias Mangu and Anr. v. State of Orissa 2003 (Supp.) OLR (NOC) 949 : (2003) 25 OCR 245; Sudarshan Sabat and Ors. v. State of Orissa (1998) 15 OCR 459; Sk. Khairur, alias Sk. Khairul and Ors. v. Kanhu Bar (2004) 27 OCR 127; Gouri Sankar Nayak and Ors. v. State of Orissa and Anr. 2004 (Supp.) OLR 467 : (2001) 29 OCR 585; Pini alias Nrupendra Kumar Sai and Anr. v. State of Orissa 2004 (Supp.) OLR 147 : (2005) 30 OCR 589; Tasoraj Mohamad and Ors. v. State of Orissa and Anr. 2004 (II) OLR 642 : (2005) 30 OCR 188 this Court has also taken the view that cognizance in respect of non-compoundable offences can be quashed by exercise of inherent power u/s 482, Cr.P.C. if the parties have amicably settled their dispute and the aggrieved party is not interested in continuance of the proceeding or if the continuance of the proceeding would amount to abuse of process of the Court. Similar view has also been expressed by Bombay High Court in Sou Nisha Sanjay Goswami v. State of Maharashtra and Anr. 2004 (4) Crimes 340.

In the present case there was some civil dispute between the parties and because of that dispute the alleged incident took place. Now the parties have settled their dispute and are living in cordial term with each other and peace has been restored in the area. The informant, who is the aggrieved person is not interested to continue the criminal proceeding. In that situation chance of conviction of petitioners in the criminal proceeding is bleak. On the contrary if the criminal proceeding is continued there is chance of disruption of the cordial relation which is now prevailing between the parties. So, in my considered opinion this is a fit case where inherent power of the Court should be invoked to quash the proceeding of G.R. Case No. 1522 of 1999 even though some of the offences involved in that case are non-compoundable as per the provision of Section 320, Cr.P.C.

Accordingly the proceeding in G.R. Case No. 1522 of 1999 is quashed and the CRLMC is allowed.