

(2022) 07 OHC CK 0109
In the Orissa High Court
Case No : CRLMC No. 1252 Of 2012

Sk. Haidar

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 19-07-2022

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 376

Citation : (2022) 07 OHC CK 0109

Hon'ble Judges : R.K. Pattanaik, J

Bench : Single Bench

Advocate : Alok Ku. Mohapatra, P.K. Nayak, S. S. Mohapatra

Final Decision : Allowed

Judgement

R.K. Pattanaik, J

1. The petitioner invoking Section 482 of the Criminal Procedure Code, 1973 (hereinafter referred to as 'Cr. P.C.') has filed the instant petition for quashing of the proceeding and order dated 16th March, 2012 passed in G.R. Case No.1273 of 2007 by the learned S,D,J,M, Bhadrak and for such other directions as may be considered just and proper in the facts and circumstances of the case on the grounds inter alia that the victim informant by an affidavit expressed her unwillingness to pursue the case even by denying the allegations made in the FIR which was not taken into consideration by the court below.

2. FIR No.727 of 2007 was registered under Section 376 IPC which was at the instance of the informant for having been subjected to rape. The details of the incident leading to the lodging of FIR are revealed from the report itself. Thereafter, Bonth P.S. No.72 dated 19 September, 2007 was registered under Section 376 IPC alleging the involvement of the petitioner and then investigation was commenced. Finally, the charge sheet was submitted under the alleged offence whereupon the learned court below took cognizance of the offence and

by order dated 16th March, 2012, in view of the absence of the petitioner, issued warrant of arrest against him and at that stage, the victim informant filed an affidavit stating that she did not want to proceed further in the case but the case was posted to 7th April, 2012 awaiting execution of warrant. A copy of the above order is at Annexure-5. The petitioner contends that in view of said affidavit dated 16th March, 2012, wherein, the informant back tracked from her allegations made in the FIR, further proceeding in G.R. Case No.1273 of 2012 should be brought to an end.

3. Heard Mr. A.K. Mohapatra, learned counsel for the petitioner and Mr. S.S. Mohapatra, learned ASC for the opposite party State.

4. Mr. Mohapatra appearing for the petitioner contends that such an affidavit was filed before the learned court below on 16th March, 2012 wherein the informant victim did not support the allegations made in the FIR and further claimed that she had been married and leading a peaceful marital life which might may get affected in case the proceeding was allowed to continue. A copy of said affidavit is at Annexure-4. Mr. Mohapatra further contends that in view of the aforesaid development and the fact that the victim informant is married since 2008, the criminal proceeding which is pending against the petitioner should be quashed.

5. On the other hand, learned ASC for the State submitted that the petitioner has been charge sheeted for an offence of rape and notwithstanding the affidavit filed by the informant, the proceeding G.R. Case No.1273 of 2007 cannot be quashed considering the fact that it is a crime against the society. It is further contended by Mr. Mohapatra that the offence under Section 376 IPC is non-compoundable and grievous in nature and therefore, inherent jurisdiction under Section 482 Cr.P.C. ought not to be exercised.

6. The decisions of the Supreme Court in State of M.P. Vrs. Laxmi Narayan and others (2019) 5 SCC 688; Narinder Singh and others Vrs. State of Punjab and another (2014) 6 SCC 466; Gian Singh Vrs. State of Punjab and another (2012) 10 SCC 303; and Madan Mohan Abbot Vrs. State of Punjab (2008) 4 SCC 582 have been cited at the Bar in order to highlight the position of law with regard to the jurisdiction of High Court vis-à-vis quashing of the criminal proceeding especially in respect of offences which are non-compoundable in nature. Mr. Mohapatra, learned ASC would contend that in serious offences like rape, murder and dacoity, etc. inherent jurisdiction cannot be exercised which has been held by the Apex Court in the case of Laxmi Narayan (supra) and even reiterated earlier. It is contended that since the offence of rape is a crime against society, in view of the above judgment of the Supreme Court, the criminal proceeding against the petitioner cannot be terminated abruptly. As against the above submission, learned counsel Mr. Mohapatra for the petitioner submitted that taking into the version of the victim dated 12th March, 2012 and the affidavit filed by the IIC of the PS dated 21st April, 2022, the prosecution against the petitioner should be terminated.

7. Admittedly from the order dated 16th March, 2012 at Annexure-5, it is made to appear that the informant sworn an affidavit (Annexure-4) and filed it before the learned court below and the same is perused by the Court. In fact, it is made to understand from Annexure-4 that the incident dated 17th September, 2007 was differently narrated by the victim. In the meantime, pursuant to the direction of this Court by order dated 25th March, 2012, the IIC of concerned P.S. filed an affidavit dated 21st April, 2022 in compliance thereof by stating that the victim is presently staying in her in-law's house at Chandikhol in the district of Jajpur and leading a peaceful conjugal life with husband and that her in-law's family is ignorant about the alleged incident. It is further stated therein by the mother of the informant that in the event her daughter appears in the court, there is every possibility of disturbance in her matrimonial life. While stating so, a copy of the intimation received by the IIC at Annexure-A from the informant is filed along with the affidavit. In other words, the family of the victim said to have expressed difficulty to pursue the case in view of the subsequent developments in the victim's life. The question is, whether, the proceeding pending before the court below may be quashed when the offence is one of rape? To reply the above, the position of law in that behalf is required to be gone through.

8. In the recent decision of the Supreme Court in *Laxmi Narayan* (supra), it is held that power under Section 482 Cr.P.C. may be exercised to quash proceedings for non-compoundable offences and cases having overwhelmingly and predominately civil character, relating to commercial transactions, about matrimonial disputes but not with respect to heinous offences, like murder, rape, dacoity etc. which are having serious impact of the society. It was further held that even such power is not to be exercised in corruption cases or offences committed by public servants while working in that capacity merely on the strength of compromise between the parties. While observing so, the Apex Court in the aforesaid decision referred to its earlier judgment in *Narinder Singh* (supra) and more or less approved the law laid therein with a clarification regarding the stage where power under section 482 Cr.P.C should be exercised with reference to Para 29.6 and 29.7 thereof. Similar view has been expressed by the Supreme Court in *Gian Singh* case. Having read the above decisions carefully, the obvious conclusion is that when an offence is serious and involves mental depravity, connected proceeding should not be quashed exercising inherent jurisdiction but where the attendant circumstances do reveal some kind of an arrangement or settlement between the parties or situation demands that the dispute should be put to rest in order to ensure peace and amity or where the chances of conviction is mostly unlikely in view of the further developments involving the parties, power under Section 482 Cr.P.C. may be exercised to secure the ends of justice. It has been restated in *Laxmi Narayan* as well as *Narinder Singh* (supra) that quashing of criminal proceedings would depend on the facts and circumstances of each case and no category can be prescribed. In the instant case, the investigation is over by 2012 which may be assumed from Annexure-4. The incident is of the year 2007. From the affidavit dated 16th

March, 2012, it appears that the informant described a different story altogether without alleging anything adverse against the petitioner. The affidavit of the IIC of the P.S. suggests that the victim was given in marriage in 2008 and presently staying with her husband and in-laws. From Annexure-A, it is also made to understand that the informant is no more inclined to pursue the case as she is staying at in-laws house and leading a happy conjugal life without bearing any grievance against the petitioner. There is nothing on record to show that the petitioner in any way exerted pressure or influence on the informant to file such an affidavit. It appears that by passage of time after marriage of the victim, the situation has changed, which led to the filing of the affidavit before the court below as well as intimating this Court under Annexure-A received through the IIC of the P.S. In such view of the matter, considering the above developments and the fact that the victim is married from 2008 and in the meantime, nearly 14 years have gone by and the fact that she is happily married which is also reported by the IIC of the P.S. in the shape of an affidavit, the Court is of the opinion that the criminal proceeding pending before the court below should be quashed to meet the ends of justice. In fact, the position of law as discussed herein above favours quashing of the proceeding keeping in view the subsequent developments which have taken place vis-à-vis the social status of the victim. In other words, it is a fit case where inherent power should be exercised to bring an end to the prosecution vis-à-vis the petitioner.

9. Accordingly, it is ordered.

10. In the result, petition under Section 482 Cr.P.C stands allowed. Consequently, the criminal proceeding in G.R. Case No.1273 of 2007 pending in the file of learned S.D.J.M., Bhadrak with the consequential order dated 16th March, 25012 is hereby quashed.

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