
(2013) 09 OHC CK 0034
In the Orissa High Court
Case No : CRLMC No. 121 of 2002

Smt. Bimala Bissoi and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 23-09-2013

Acts Referred:

Citation : (2013) 116 CLT 1115 : (2013) 2 OLR 923

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : B.K. Sharma, for the Appellant;

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J.—The petitioners have filed this application u/s 482, Cr.P.C. with a prayer to quash the order dated 13.05.1997 passed by the learned S.D.J.M., Nabarangpur in I.C.C. No. 54 of 1996 under Annexure-1 taking cognizance of the offences under Sections 366, 302 /34, IPC against them and the confirming order dated 28.6.2002 passed by learned Addl. Sessions Judge, Nabarangpur in Crl. Revision No. 153 of 2000 under Annexure-2. The short facts of the case are that on 29.8.1995 at about 10 A.M. Madana, the daughter of the informant Gopi Bissoi of village Jhadakusumi went to river side with a crow bar and tin diba (pot) to bring earth. As she did not return back to the house till evening, the informant along with his co-villagers searched for her and in spite of thorough search, they could not trace out Madana. On 30.8.1995 at 3.00 P.M. the informant came to know from some of his co-villagers that on the previous day at 10 A.M. while Madana was digging earth on the bank of the river of their village, the accused persons, namely, Trinath Bisoi (petitioner No. 3) and another Subasn Bisoi forcibly dragged her to a nearby sugarcane field and again at about 1 P.M. the accused Trinath Bisoi dragged her from the sugarcane field to his house at village Niladriguda. On 31.8.1995 in the evening the informant along with others went to the house of accused Trinath Bisoi who admitted to have brought Madana to his house to marry her and directed the informant and others

to come to his house three days thereafter to settle up the marriage. On 2.9.1995 the informant sent one Makunda Bhatra to the house of the accused Trinath Bisoi to inform him about their visit to his house on 3.9.1995 to settle up the marriage, but the accused Trinath Bisoi and his parents told Makunda Bhatra that they had not brought Madana to their house. Thereafter, Makunda Bhatra returned back to the house of the informant and informed the said fact to him. On 3.9.1995 some persons, who were cutting paddy near a mango tope of village Jhadakusumi found foul smell coming out of the said tope. When this fact came to the notice of the informant, he along with others went to the mango tope where he found his daughter Madana lying dead on the ground. Accordingly, the informant reported the missing of his daughter on 3.9.1995 at 5 P.M. and recovery of her dead body from the mango tope before, the Tumarala out-post, which was registered as U.D. Case No. 1 of 1995 and the A.S.I. of Tumarala out-post took up investigation. Thereafter, the O.I.C., Papadahandi P.S. took charge of the enquiry of the U.D. Case from the A.S.I. of Tumarala Out-post on 16.10.1995.

2. During enquiry on 13.11.1995 as the O.I.C. Papadahandi P.S. found materials against the accused persons Trinath Bisoi and Subash Bisoi under Sections 366, 306 /34. IPC, he drew up plain paper F.I.R. on the spot and took up the investigation of the case, which was registered as P.S. Case No. 76 of 1995 corresponding to G.R. Case No. 398 of 1995. During investigation of the case, the police arrested Trinath Bisoi and forwarded him to custody. It also came to the light that as the parents of the accused Trinath Bisoi did not agree with the proposal of his marriage with Madana, the accused Trinath Bisoi left her in her village Jhadakusumi on 3.8.1995 in the evening and being insulted by the accused persons, Madana in the same night committed suicide. Thereafter, the police arrested both Trinath Bisoi and Subhas Bisoi and forwarded them to custody. On completion of investigation, the police submitted charge-sheet against the accused persons, namely, Trinath Bisoi and Subash Bisoi under Sections 366, 306 /34 IPC in the Court of learned S.D.J.M., Nabarangpur in G.R. Case No. 363 of 1995. Since the prayer for bail of both Trinath Bisoi and Subash Bisoi was rejected by the learned S.D.J.M., Nabarangpur, they moved applications for bail before the learned C.J.M.-cum-Asst. Sessions Judge, Nabarangpur in Crl. Misc. Case Nos. 62 of 1995 and 66 of 1995, which were allowed and thereafter, both the accused were released on bail.

3. Since the other accused Subash Bisoi remained absconded, the case was split up and committed to the Court of learned C.J.M.-cum-Asst. Sessions Judge, Nabarangpur by order dated 12.10.2009 and the same was registered as Sessions Case No. 29 of 1999. The trial as against the accused Trinath Bisoi was commenced.

4. It is relevant to mention here that during the investigation of G.R. Case No. 398 of 1995 arising out of Papadahandi P.S. Case No. 76 of 1995, Gopi Bisoi being the complainant filed I.C.C. Case No. 54 of 1996 before the learned

S.D.J.M., Nabarangpur against all the petitioners including Subash Bisoi for commission of offence under Sections 366 ,306 /34, IPC. On the basis of the initial statement recorded, the learned S.D.J.M., Nabarangpur took cognizance against all the petitioners for the offence under Sections 366, 303 /34, IPC and issued process against the accused persons. The said order of cognizance dated 13.5.1997 was challenged by the petitioners before the learned Addl. Sessions Judge, Nabarangpur in Crl. Revision Petition No. 153 of 2000, which was also confirmed. Both the orders are impugned in this CRLMC.

5. In the revisional order, learned Addl. Sessions Judge, Nabarangpur in paragraph 2 held that during investigation of G.R. Case No. 363 of 1995 (G.R. Case No. 398 of 1995), the informant Gopi Bisoi lodged complaint in ICC Case No. 54 of 1996 u/s 366, 302 /34, IPC against all the petitioners. Even though investigation by police was in progress, the learned SDJM, Nabarangpur proceeded to enquire into the allegations made in the complaint petition.

6. Mr. B.K. Sharma, learned counsel for the petitioners submitted that in the Sessions Case No. 25 of 1999 arising out of G.R. Case No. 363 of 1995, the petitioner No. 3, Trinath Bisoi has been convicted u/s 366, IPC and sentenced to undergo R.I. for three years and to pay a fine of Rs. 2,000/-, in default to undergo R.I. for three and to pay a fine of Rs. 2,000/-, in default to undergo R.I. for three months for the offence u/s 366, IPC. Therefore, he should not be liable to be tried again on the self-same allegations. He further strenuously urged that since petitioner No. 3, Trinath Bisoi has been convicted for the selfsame allegation, the complaint case, i.e. ICC Case No. 54 of 1996 is hit by Section 300 Cr.P.C. Further, so far as petitioner Nos. 1 and 2 are concerned, since the police did not find any materials against them in Papadahandi P.S. Case No. 76 of 1995 corresponding to G.R. Case No. 363 of 1995, no charge-sheet has been filed against them. He further submitted that during trial of Sessions Case No. 29 of 1999 arising out of G.R. Case No. 398 of 1995, the complainant, Gopi Bisoi though was examined as P.W. 1, during his examination, he did not state anything against the petitioner Nos. 1 and 2. In view of such position, Mr. Sharma submitted that impugned orders under Annexures-1 and 2 should be quashed.

7. Mr. Zaffrullah, learned Addl. Standing Counsel appearing for the State vehemently objected to such contention of the learned counsel for the petitioner. He stated that so far as petitioner No. 3-Trinath Bisoi is concerned, he having been convicted in G.R. Case No. 398 of 1995, the impugned order so far as petitioner No. 3 is concerned should be quashed, but so far as the proceeding against petitioner Nos. 1 and 2 is concerned, the same should continue in view of the decision of this Court i Raghunath Das and Others Vs. State of Orissa and Another, and Nabakishore Behera Vs. Bhagabat Naik and Others

8. On consideration of the above facts and circumstances, I am of the view that so far as petitioner No. 3 is concerned, Section 300 Cr.P.C. is a bar because a person once convicted or acquitted, cannot be tried for the same offence subject

to the exception under Sub-sections (2) to (6) thereof. In the case at hand, petitioner No. 3 having already been tried for the offence and convicted thereof, subsequently on the basis of the complaint case for the self-same occurrence, he should not be tried as it would amount to double jeopardy.

9. Chapter-III of the Constitution of India deals with "fundamental rights". Article 20 provides that no person shall be prosecuted or punished for the self-same offence more than once. But so far as the provisions contained u/s 300(1), Cr.P.C. is concerned, it is clearly envisaged that a person once convicted or acquitted, cannot be tried for the same offences, which is subject to the exception under Sub-sections (2) to (6) thereof. Similar question came up for consideration before this Court in *Mitra Sankar Nanda Vs. State of Orissa and Another*, in which a catena of decisions of the apex Court have been taken into consideration and therefore, this Court has no hesitation to hold that the petitioner No. 3 cannot be tried once again as he has been once convicted for the same offence. So far as petitioner Nos. 1 and 2 are concerned, they are the parents. On perusal of the materials available on record, it is found that petitioner Nos. 1 and 2 are no way connected with the offence alleged far from allegation u/s 302, IPC. To add to this, the informant Gopi Bisoi when examined as P.W. 1 in G.R. Case No. 398 of 1995, has not stated anything against petitioner Nos. 1 and 2 about the so-called alleged offences committed by them. On the basis of the materials available on record, there is no prima facie case made out against petitioner Nos. 1 and 2. The investigating officers being the kingpins in the criminal justice system, their reliable investigation is the leading step towards affirming complete justice to the victims of the case. Hence, they are bestowed with dual duties, i.e., to investigate the matter exhaustively and subsequently collect reliable evidences to establish the same.

10. In the present case, after collecting the materials, the I.O. has discharged his duty and responsibility basing upon which petitioner No. 3 faced trial. But so far as it relates to petitioner Nos. 1 and 2, since there is no prima facie material available the proceeding against them in ICC No. 54 of 1996 will amount to abuse of the process of Court. Therefore, in the interest of justice, equity and fair play, in order to prevent the abuse of the process of Court, the impugned order of cognizance against petitioner Nos. 1 and 2 should be quashed. Accordingly, the same is quashed. Consequence thereof, the order in Annexure-2 is also quashed. In view of the above facts and circumstances, the CRLMC is allowed.