

(2001) 09 OHC CK 0003

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 1265 of 1999

Smt. Dipali Chakrabarti and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 21-09-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 307, 324, 34, 498A, 504

Citation : (2002) 1 DMC 491 : (2001) 21 OCR 745 : (2001) 2 OLR 527

Hon'ble Judges : B. Panigrahi, J

Bench : Single Bench

Advocate : S. Palit, D. Biswal, C.R. Lenka and J.K. Dash, for the Appellant; Addl. Standing Counsel, for the Respondent

Judgement

B. Panigrahi, J.—This is an application u/s 482, Code of Criminal Procedure, for quashing of the F.I.R. lodged by one Purnima Chakrabarti, registered as Brajarajnagar P.S. Case No. 5, dated 7.1.1999 corresponding to G.R. Case No. 36/ 1999, pending in the Court of the S.Q.J.M., Jharsuguda.

2. The essential facts stated in the application are as follows : The marriage between Purnima Chakrabarti, the informant, and present petitioner No. 3, Partha Pratim Chakrabarti, was solemnized on 5.2.1998 at Gumadera within Belpahar P.S. At the time of her marriage, the petitioners allegedly demanded cash of Rs. 40,000/- and accordingly, the parents of the informant had given on two instalments, one on 25.1.1998 Rs 20,000/- and the balance Rs. 20,000/- on 27.1.1998. They had also given two VIP suitcases and other marriage presentations. Despite this, their relationship did not continue cordially and there was frequent bickering, misunderstanding and quarrel between the two spouses as a result of which they fell out from each other. Sometimes, petitioner No. 3 was found drunk and ill-treated the informant by beating and torturing her. The torture continued unabated as a result of which the informant had to leave the matrimonial house and took shelter with her parents. She was constantly

threatened to be done away with. It is further stated that even after the intervention of well-wishers and friends of both the spouses, their relationship did not continue well. Since harassment and torture upon the informant became unbearable and intolerable, she had to file a report which was treated as F.I.R. as per Annexure-1 and on the basis of such F.I.R. a case was registered under Sections 498A, 307, 324, 504/34, I.P.C. and Section 4 of the Dowry Prohibition Act. This application by the mother-in-law, father-in-law and husband of the informant has been filed seeking for quashing of the F.I.R. as well as the criminal proceeding before the learned S.D.J.M., Jharsuguda. There has been an interim order of stay passed by this Court regarding continuance of the criminal proceeding in G.R. Case No. 36/1999.

3. During the pendency of this case, certain developments have taken place. Before the parties filed an application for mutual divorce which was registered as T.S. No. 54/2000 in the Court of the Civil Judge (Senior Division), Sambalpur on 15.3.2000. In the said suit, after expiry of about a year, the learned Civil Judge passed a decree of mutual divorce on 2.3.2001. Mr. Palit, learned Advocate appearing for the petitioners, has submitted that neither party has filed appeal against the said decree of divorce before this Court and the decree of divorce was allowed to be treated as final. In the meantime, the informant is said to have married for the second time. The informant and her parents have filed three separate affidavits in this case indicating that they have ironed out their differences and the petitioners had agreed to pay Rs. 1,01,000/- (Rs. 96,000/- in cash and Rs. 5,000/- in the shape of fixed deposit certificate in the name of the informant). In the above back-drop, Mr. Palit for the petitioners contends that the criminal proceeding should be quashed even though the offences alleged are said to be non-compoundable in nature. Mr. Palit has relied upon a Division Bench decision of this Court reported in 1999 (I) OLR 87; Basanta Kumar Baral and Ors., etc. etc. v. State of Orissa and Ors. The Division Bench while interpreting the provisions of Sections 320 and 482, Cr.P.C. observed as follows. :

"15. In the background of what has been stated above, it is clear that Section 482 of the Code can be utilised to secure the ends of justice in cases where compounding is not permissible u/s 320 of the Code. But it is not to be exercised in a routine manner. As was observed by the Apex Court in Krishnan and Anr."s case [1977 (1) Crimes 97 (SC) (supra)], it can be utilised to meet the ends of justice or to prevent the abuse of process of law. It has to be sparingly used and only when the Court is satisfied that by exercise of it needless multiplicity of proceedings, unnecessary delay in trial and protraction of proceedings can be avoided, it can be done. Merely because an affidavit or petition has been filed by the parties that they have sorted out their differences, that would not suffice. In every case, the Court has to be satisfied that the compromise was voluntary and was not the result of any intimidation, threat, coercion or undue influence. In large number of cases it is noticed that compromise is obtained by intimidation, show of muscle and money power. In cases where there is scope for a suspicion that apparent is not the real, Court should not exercise power u/s 482. That

would not be step for securing ends of justice, but on the other hand it would amount to destruction of credibility of the institution, and its ultimate result would be ignoble and immoral. Notwithstanding the compromise, the Court should ask the parties to appear before the lower Court for verification of the statements regarding compromise and the investigating agency should be directed to submit a report expeditiously, in order to avoid unnecessary delay in the trial and protraction of proceedings. Court has to lift the veil of so-called restoration of fellow-feeling, desire to wipe out differences and clearance of misunderstanding. The truth has to be unravelled. Only when the Court is satisfied about the bona fides, then it can entertain the prayer to exercise inherent power. Normally relevant materials are to be scanned though which would not be an easy job. Therefore, the correctness of the statements regarding compromise can be more effectively examined by the Trial Court and if necessary trial can be taken up immediately to put an end to the litigation. Only when the High Court is satisfied about the genuineness of the compromise beyond shadow of doubt, it can exercise inherent power. The Court in such matters has to adopt strong attitude and no liberal attitude is to be shown, as there is every possibility of the victim being made to suffer further on account of machinations by the offender. Our answer, therefore, is that there is no bar for exercise of power u/s 482 in respect of a case which involves non-compoundable offence in terms of Section 320 of the Code. But the power has to be most sparingly used in appropriate cases. It has to be the exception and not the rule."

Thus the following legal position boils down from the aforesaid judgment :

(i) The power u/s 482, Cr.P.C. can be utilised to secure the ends of justice in cases where compounding is not permissible u/s . 320, Cr.P.C. but it has not to be utilised in a routine manner and has to be exercised sparingly if the fact-situation so demands.

(ii) Even if such proceeding is allowed to continue, no fruitful result will emerge from the situation in view of the fact that parties have already entered into compromise.

(iii) In most of the cases also it is noticed that compromise application is either voluntary or procured by adopting such other means as threat, intimidation or undue influence. In some cases such compromise is also entered by exercise of muscle and money power. What the Court has to see is whether such compromise is essential to keep the peace and amity between the two spouses. In case the Court is satisfied that such compromise is bona fide and legal, then there is no sense in allowing the proceeding to continue and the Court has enough power u/s 482, Cr.P.C. to quash the proceeding.

4. In a recent judgment passed by a learned Single Judge of this Court (Hon"ble B.P. Das, J.) reported in 2000 (I) OLR 1, Subash Chandra Mishra v. The Republic of India and Anr., it was held in the following manner :

"7. In this regard it is worthwhile to look at the decision of this Court reported in

(1998) 15 OCR 449, Raj Kishore Behcra and Ors. v. State of Orissa and Anr., wherein it was held that where the husband and the wife in spite of some previous misunderstanding intend to stay together, it should be the duty of the Court to encourage such reapprochement and allow them to live as husband and wife, rather than to disrupt the family prosperity by forcing the wife to pursue a criminal proceeding on the facile, nay fatuous plea, that the offence alleged is not compoundable. The same view was taken in the decision reported in (1998) 15 OCR 587, Chandra Sekhar Senapati v. Suneeta Sennapati and Anr. This is also a case where the offence committed was u/s 498A, I.P.C. and the husband and the wife wanted to live as married couple. It was held that it would be travesty of justice if the criminal proceeding is allowed to continue merely because Section 498A, I.P.C. is not compoundable. In the case at hand, from the affidavit filed by both the parties, it transpires that there is no chance of re-union and they have agreed to end their marital relationship for which the proceeding for a decree for divorce is pending before the Family Court. It also appears from the grounds stated in the aforesaid affidavit that they have reached at certain terms and have also wanted to lead a fresh life of their own. Basing on the aforesaid background of facts, learned Counsel for the petitioner submits that interest of justice will be best served if both the parties are allowed to stay in peace without , being bothered by the criminal proceeding. This aspect was taken into consideration by this Court in Criminal Misc. Case No. 4828 of 1997, Sujata Mohantyv. Debabrata Mohanty and Ors. Relying on the aforesaid decision, this Court has dealt with a matter in Criminal Misc. Case No. 5614 of 1999, Susanta Kumar Choudhury and Ors. v. State of Orissa and Anr. In a similar situation, while dealing with an application u/s 482, Cr.P.C being CrI. Misc. Case No. 1361 of 2000, Bibekananda Das and Ors. v. Puspanjali Das and Ors., this Court accepted the joint petition of the husband and wife where they settled their dispute amicably on certain terms and conditions and preferred to be separated, and allowed the application and quashed the proceeding so initiated for the offence under Sections 498A/323/34, I.P.C.

8. Considering all these aspects as well as looking into the terms and conditions so set forth in the joint affidavit which shall form a part of this order and the fact that the criminal proceeding should not be construed as an instrument of oppression rather it would be considered as means of achieving social justice and harmony, particularly when both the husband and the wife want to live separately and put to an end to the marital ties and do not want to proceed further with the criminal case, and want to end the divorce suit pending before the Family Court with consent on the aforesaid terms, it would be proper to allow the prayer of the parties. It may be noted here that this view of mine gets support from two decisions of this Court in Name withheld Vs. State of Orissa and Others, and Mohammad Hassan and Another Vs. Asraf Alli Khan and Another, Accordingly, the proceeding in S.P.E. No. 4 of 1997 pending on the file of learned Addl. C.J.M., C.B.I., Bhubaneswar, is hereby quashed."

5. Keeping the aforesaid legal principles in mind, let me now advert to the

factsituation of the present case. Admittedly, there was a marriage between the informant and respondent No. 3 on 5.2.1998. Soon thereafter, there was constant quarrel and frequent disturbance of their family peace as a result of which the informant had to stay with her parents. The charge-sheet in the case is yet to be filed by the Investigating Officer. Cognizance of the case has not yet been taken. The nature of offence at this stage cannot be determined to ascertain whether it is compoundable or non-compoundable because the Court is yet to take cognizance on the case. The affidavits filed by the informant and her parents would unmistakably show that there has been a compromise between the petitioners and the erstwhile bridal party. The informant has already entered into remarriage. At this stage if the proceeding is allowed to continue, the informant and her second husband will be unnecessarily put to humiliation and ignominy. Therefore, keeping such situation in mind, I hereby quash the case registered against the petitioners in Brajarajnagar P.S. Case No. 5 dated 7.1.1999 under Sections 498A, 307, 324, 504/34, I.P.C. and Section 4 of the Dowry Prohibition Act and consequently the G.R. Case No. 36/1999 arising therefrom.

The Criminal Misc. Case is accordingly allowed.