

(2004) 10 OHC CK 0009

In the Orissa High Court

Case No : Criminal M.C. No. 793 of 2004

Sri Chandra Sekhar @ Chagulu Das and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 15-10-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 109, 366, 376, 493, 506

Citation : (2004) 2 OLR 650

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

Bench : Single Bench

Advocate : R.N. Mohanty-2, C.R. Sahu, N.Saw, K.P. Mohanty and C.R. Sahoo,
for the Appellant; Addl. Government, for O.P. No. 1 and S.R. Mohapatra, for O.P.
No. 2, for the Respondent

Judgement

A.K. Parichha, J.—The petitioners in the present application have prayed for quashing of the cognizance taken against them by the learned J.M.F.C., Soro in ICC No. 93 of 2002.

2. Opposite party No. 2 filed a complaint bearing ICC No. 93 of 2002 alleging that petitioner No. 1 with the help of petitioner Nos. 2 to 4 kidnapped her from the house of her brother-in-law Gadadhar Mohanty at village Gabdastapur and thereafter ravished her for several days keeping her confined at the point of bhujali in the house of his relative situated in a different village. She also alleged that after ravishing her for several days, petitioner No. 1 left her near her parental village Podadiha, threatening her with dire consequences if she discloses about the kidnap and rape etc. The learned J.M.F.C. forwarded the complaint petition u/s 156(3) of the Code of Criminal Procedure to the Officer in-charge, Soro Police Station for treating the same as an F.I.R. and for conducting investigation into the allegations. The Officer-in-charge on receipt of the complaint petition and communication from the J.M.F.C., Soro registered P.S. Case No. 5 of 2003 and directed one S.I. of the Police Station to undertake investigation. The said S.I. conducted investigation and submitted charge-sheet

under Sections 493 and 506, Indian Penal Code only against petitioner No. 1. Learned J.M.F.C., however, after perusing the materials available in the case diary, felt that prima facie case for the offences under Sections 366, 493, 376, 506/109, Indian Penal Code is available against all the four petitioners. He, therefore, took cognizance of those offences against all the petitioners and directed issue of N.B. Ws. Dissatisfied with the said order of cognizance, the petitioners have filed this application for quashing the cognizance taken against them.

3. Mr.K.P. Mohanty, learned Counsel for the petitioners submits that the case diary does not contain any material to constitute any of the alleged offences against the petitioners. According to him, if all the allegations of the opposite party No. 2 and the materials in the case diary are accepted blindly, then some element of Section 493, Indian Penal Code will only be available against petitioner No. 1.

4. Mr B.N. Mohanty, learned Counsel for opposite party No. 2, on the other hand, contends that there are clear allegations in the statements of opposite party No. 2 and other witnesses examined by the I.O. to implicate all the petitioners in the offences under Sections 366, 376, 493, 506/109, Indian Penal Code.

5. In view of the rival contentions of the respective parties, the materials in the case diary and the surrounding circumstances need to be examined carefully to find out as to whether prima facie case for the offences alleged, is available or not.

6. In the complaint petition, opposite party No. 2 has alleged that while she was staying in the house of her elder sister at village Gobdastapur, petitioner No. 1 developed acquaintance with her and offered to marry her and then one night he with the assistance of petitioner Nos. 2 to 4 forcibly kidnapped her in a Maruti Van and thereafter kept her in a relative's house where he had repeated sexual intercourse with her at the point of bhujali. She has further alleged that during their stay in the relative's house, she was virtually kept confined and after few days she was brought her and left by petitioner No. 1 near the village of her parents. In her statement before the I.O., she has given a slight different version. In her statement, she never named the petitioner Nos. 2 to 4 nor implicated them in any manner. She also stated that petitioner No. 1 used to meet her regularly in her sister's house and used to propose to marry her. She also stated that after taking her from her sister's house, petitioner No. 1 put vermilion on her forehead and sinthi in presence of Goddess and declared his marriage with her and after that he regularly cohabited with her for few days against her will. She has also stated before the I.O. that when she vehemently expressed her dissatisfaction, petitioner No. 1 brought her in a vehicle and left her near her parental house. The sister and brother-in-law of opposite party No. 2 have stated before the I.O. that both petitioner No. 1 and opposite party No. 2 used to meet and both of them developed intimacy and petitioner No. 1 had proposed to marry opposite party No. 2. They both stated that one night

opposite party No. 2 was found missing and learning that petitioner No. 1 is also missing, they called a meeting in the village and the villagers declared that on return of opposite party No. 2 and petitioner No. 1 their marriage will be performed. The village gentries who have been examined by the I.O. have also given the similar statements. None of these witnesses has in any way implicated the petitioner Nos. 2 to 4 with the alleged incident. The report of the doctor shows that after taking the X-ray photo of the victim girl and after making other necessary tests, he found that the girl was about 25 years old and there was pregnancy of 26-28 weeks. The date of the report of the doctor is 10.1.2003 and the pregnancy of opposite party No. 2, was therefore, started 28 weeks prior to 10.1.2003. If that be so, then the pregnancy had already started before the alleged date of occurrence, which is 2.8.2002. The statements of witnesses and the medical report available in the case diary do not constitute a prima facie case for any of the alleged offences against petitioner Nos. 2 to 4, rather it exhibits a prima facie case of consent on the part of opposite party No. 2 in the alleged episode. However, there are statements and circumstances in the case diary to prima facie show that petitioner No. 1 cohabited with opposite party No. 2 giving her an impression that they were married and then at a later stage abandoned her when she was pregnant. These evidence clearly constitute a prima facie case u/s 393, Indian Penal Code.

7. Section 482, Code of Criminal Procedure (CrPC) empowers the High Court to quash the cognizance, if no prima facie case is available in the case diary for initiation of a criminal proceedings. Here is a case where there is not an iota of material to constitute a prima facie case for any of the alleged offences against petitioner Nos. 2 to 4. Therefore, the cognizance taken against these petitioners need be quashed. So far as petitioner No. 1 is concerned, no prima facie case has been made out for the offences under Sections 366, 376, 506/109, Indian Penal Code. So, the order taking cognizance of these offences against the petitioner No. 1 also need to be quashed. There is, however, material to constitute a prima facie case for the offence u/s 493, Indian Penal Code against the petitioner No. 1 and so the order of cognizance so far as this offence is concerned against petitioner No. 1 cannot be quashed.

8. In the result, therefore, the cognizance taken against the petitioner Nos. 2 to 4 the offences under Sections 366, 376, 493, 506/ 109, Indian Penal Code in ICC No. 93 of 2002 (Crl. Trial No. 7 of 2002) is quashed. So, far as petitioner No. 1 is concerned, cognizance of the offences under Sections 366, 376, 506 Indian Penal Code quashed. The proceeding u/s 493, Indian Penal Code will, however continue against petitioner No. 1.

9. CRLMC is disposed of accordingly.