
(2009) 08 OHC CK 0066
In the Orissa High Court
Case No : CRLMC No. 1388 of 2007

Tutu ' Basanta Swain

APPELLANT

Vs

Bipin Bihari Parida

RESPONDENT

Date of Decision : 20-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2009) 2 ILR (Ori) 511 : (2010) 1 OLR 273 Supp

Hon'ble Judges : R.N. Biswal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.N. Biswal, J.—In this CRLMC, arising out of a petition u/s 482 of Code of Criminal Procedure the Petitioner challenged the order dated 17.05.2007 passed by the learned J.M.F.C., Nimapara in I.C.C. Case No. 203 of 2006, taking cognizance of the offence u/s 302 of I.P.C. and issuing Non-Bailable Warrant of Arrest against him.

2. Succinctly stated, the fact giving rise to the present case is that on 25.01.2004, the daughter of the opposite party (complainant), Bijayalaxmi Parida, aged about 20 years went to take bath in the pond adjacent to the backward of his house. As there was delay in her returning back, his mother, Basanti Parida, went in quest of her and found her lying in the pond in an unconscious state. So, she raised hullah, hearing which, opp. party with his family members and some outsiders arrived at the spot and shifted Bijayalaxmi to Astaranga Hospital, but the doctor declared her brought dead. It was alleged by the opp. Party that one Dilip Parida disclosed before him that he saw the Petitioner running away from the pond in question with mud over his entire body. So, opp. party reported the incident before the O.I.C., Astaranga Outpost, but since no step was taken by him, he wrote a petition to the S.P., Puri, who directed the O.I.C., Kakatpur P.S. to register the petition as an U.I. case and

enquire into the matter. Accordingly, the O.I.C. registered the petition as U.I. case No. 197 of 2004 and enquired into the matter. After enquiry, the O.I.C. submitted final report, holding that there was love affair between the Petitioner and the deceased and when the marriage proposal between the deceased and the Petitioner was turned down by the family members of the latter, the deceased committed suicide by drowning in the pond.

3. On coming to know about the submission of final report, opp. party filed the aforesaid complaint case against ten accused persons including the Petitioner before the J.M.F.C., Nimapara. As per the complaint petition, on 25.01.2004 at about 8.00 A.M., the deceased had gone to the pond near the backyard of her house. As there was delay in her returning back, her grandmother, Basanti Parida went in search of her to the pond and found the deceased lying senseless in two feet deep-water. At this sight, she raised hullah, in response to which, opp. party with his family members and some co-villagers rushed to the spot, shifted Bijalaxmi to Astaranga Hospital, where she was declared brought dead. While the opp. Party and others were there in the hospital, Dilip Parida disclosed that he saw the Petitioner coming from the pond in question with mud all over his body during the time of alleged occurrence. The mother of the opp. party, Basanti Parida also saw the Petitioner and the deceased talking near the pond. It is further alleged that all the accused persons cremated the dead body of the deceased to screen the evidence of murder. The opp. party reported this fact in Astaranga Outpost, in response to which, the officer-in-charge of that Outpost visited the spot and seized one Chapal and one towel belonging to the Petitioner, but did not proceed with the investigation. Then, as stated earlier, opp. party sent a petition to the S.P., Puri, who directed the O.I.C. of Kakatpur P.S. to register an U.I. case and enquire into the matter. Accordingly, the O.I.C. registered the U.I. Case No. 197/2004 and enquired into it and after completion of enquiry, submitted the final report. Thereafter, the complaint petition was filed against the Petitioner and nine others as stated earlier. The J.M.F.C, Nimapara took initial statement of the opp. party, examined six other witnesses and after going through their evidence, disbelieved the allegation u/s 201 of I.P.C. and dismissed the complaint case so far as accused Nos. 2 to 10 were concerned. But, he took cognizance of the offence u/s 302 of I.P.C. and ordered to issue N.B.W. of arrest against accused No. 1 (Petitioner) vide order dated 17.05.2007.

4. Being aggrieved with the said order of taking cognizance u/s 302 of I.P.C. and issuing N.B.W. of Arrest against him, accused No. 1 (Petitioner) filed the present CRLMC u/s 482 of Code of Criminal Procedure

5. Learned Counsel for the Petitioner submitted that there was no iota of evidence to hold that the deceased was murdered, let alone murdered by the Petitioner. The dead body was cremated just after it was brought to the village of the opp. Party. If, in fact, opp. party suspected the Petitioner to have committed the murder of deceased, he would not have allowed to cremate the dead body before autopsy was conducted over it. He further submitted that even though

there was no material whatsoever against the Petitioner, N.B.W. of Arrest was issued against him on the accusation of commission of murder of the deceased, which is illegal per se. Learned Counsel for the Petitioner brought to the notice of this Court the decision in the case of Harishchandra Prasad Mani and Ors. v. State of Jharkhand and Anr. (2007) 36 OCR (SC) 708, where the Apex Court held:

It is true that at the stage of taking cognizance adequacy of evidence will not be seen by the Court, but there has to be at least some material implicating the accused, and cognizance cannot be taken merely on the basis of suspicion as it appears to have been done in the present case-To take a contrary view would only lead to harassment of people.

Again he cited the decision of this Court in the case of Gangadhar Barik and Another Vs. State of Orissa and Another, , where it has been held that in absence, of prima facie material, cognizance cannot be taken in any offence. Furthermore, learned Counsel for the Petitioner cited the decision in the case of Puma Chandra Panda and 3 Ors. v. State of Orissa and Anr. 86 (1998) C.L.T. 628, wherein this Court held that before taking cognizance, the Magistrate should be satisfied regarding existence of prima facie case. Order of taking cognizance should not be passed mechanically without application of judicial mind.

6. Per contra, learned Counsel appearing for opp. Party submitted that there are ample materials to take cognizance u/s 302 of I.P.C. and issue N.B.W. of Arrest against the Petitioner. It is the settled principle of law that when the prosecution is at the initial stage, the interference of the High Court u/s 482 of Code of Criminal Procedure is very limited. When the un-controverted allegations made in the complaint petition do not establish any offence, then only, cognizance could be quashed. This Court should not meticulously examine the case on merit and quash the order of Magistrate directing issue of process against the accused. In the case at hand the evidence of the witness Nos. 2 to 6, besides the statement of witness No. 1, (complainant) go to show that there are ample materials to prima facie hold that the Petitioner committed murder of the deceased. Hence, learned Counsel for the opp. Party prayed to dismiss the CRLMC.

7. On perusal of the evidence of witness No. 2, the mother of Petitioner No. 1 and grandmother of the deceased, it is found that on the date of occurrence, when the deceased had gone to the pond to take her bath, she saw the Petitioner talking with her. It transpires from the evidence of P.W. 3 that about the time of alleged occurrence, he saw the Petitioner, running away from the pond with mud all over his body. It is found from the evidence of witness Nos. 1, 3 and 4 that one Chapal and a towel belonging to the Petitioner were recovered by the A.S.I, of Astaranga outpost. It is borne out from the evidence of the witnesses that the depth of the water of the pond was about five-feet-deep. So, prima facie it cannot be said that the deceased was drowned in the water and died. It transpires from the evidence on record that the Petitioner remained absconded for more than two months after the occurrence. It also transpires from the evidence of witness No. 4 that a relative of the Petitioner, namely Bala Krushna

Nayak told him that the Petitioner committed murder of the deceased. It is found from the evidence on record that there was a proposal for compromising the case. It transpires from the evidence of P.W-7 (complainant) that he heard from his wife that the Petitioner was loving the deceased but the deceased was not willing to marry her. At this stage, the admissibility or otherwise of the evidence cannot be considered. So only because autopsy was not conducted over the dead body of the deceased it cannot be said that there was no prima facie case to take cognizance and issue N.B.W. of Arrest against the Petitioner.

8. In view of the aforesaid materials, it cannot be said that there is no iota of evidence so as to take cognizance u/s 302 of I.P.C. and issue N.B.W. of Arrest against the Petitioner. At this stage, it is not required to examine whether the accused would be convicted or not. It is under the domain of the trial court.

9. Under such facts and circumstances, the CRLMC stands dismissed and the order dated 17.05.2007 passed by the learned J.M.F.C, Nimapara in I.C.C. Case No. 203 of 2006 is hereby confirmed.