

(2006) 04 OHC CK 0044
In the Orissa High Court
Case No : CRLMC No. 227 of 2006

Umashankar Agrawal ' Umashankar Singhal and Others	APPELLANT
Vs	
State of Orissa	RESPONDENT

Date of Decision : 11-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157, 161, 164, 173, 173(2)
Penal Code, 1860 (IPC) — Section 201, 302, 304B, 34, 498A

Citation : (2006) 101 CLT 830 : (2006) 1 OLR 700

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : Debasis Panda, G.P. Mohanty and M.S. Panda, for the Appellant;
Addl. Standing Counsel, for the Respondent

Judgement

A.S. Naidu, J.—One Sobha Singhal, a young bride, vanished from mother earth shortly more than a year after her marriage. Admittedly she was married to accused Umashankar Agrawal " Singhal on 30th of May, 1996 and on 16th of September, 1997 a report was lodged with police at Uditnagar Outpost by husband Umashankar that his wife Sobha was missing. At the other hand, on 19th September, 1997, Rajkishore Chhapolia, father of Sobha, filed an FIR at the Plant Site Police Station, Rourkela stating that he apprehended some foul play at the matrimonial house of Sobha. On the basis of the FIR of Rajkishore Chhapolia, Plant Site P.S. Case No. 317 of 1997 was registered. On completion of investigation police submitted charge-sheet under Sections 498-A/34 IPC against Umashankar Singhal and Rani " Laxmi Kumari Podar. Learned SDJM, Panposh took cognizance of the aforesaid offences in G.R. Case No. 1483 of 1997 and framed charge against them.

2. The aforesaid accused persons challenged the order of the SDJM framing charge against them in revision, vide Criminal Revision No. 1 of 1999 before the Addl. Sessions Judge, Rourkela and the said revisional Court quashed the charge and discharged both the accused persons. In the meanwhile, being dissatisfied

with the progress of investigation, the informant moved this Court by filing a habeas corpus petition registered as OJC No. 11409 of 1998. This Court in the said Writ application directed the local police to trace out Sobha. While matter stood thus, this Court on coming to know about the order passed by the Addl. Sessions Judge, Rourkela, disposed of the Writ application with direction to the investigating agency to cause further investigation into the case. In consonance with the said direction of this Court, the SDJM, Panposh accorded permission to the Inspector of Police, Human Rights Protection Cell, Orissa, Cuttack to re-investigate into the case and after such re-investigation the investigating officer submitted final report on the ground that he could not find sufficient evidence to lay a chargesheet. The conclusion arrived at is quoted hereinbelow :

From the fact and circumstances discussed above it is a true case u/s 498-A/302/201/34 IPC and accused persons (1) Uma Shankar Singhal, (2) Satyanarayan Singhal, (3) Raju " Rajkumar Singhal, (4) Gouri " Gourishankar Singhal, (5) Jagdish Prasad Singhal, (6) Geeta Devi and (7) Driver Hari Oram liable but the circumstantial evidence collected so far are not sufficient to place chargesheet against them Jagdish Prasad Singhal " Agarwal and Geeta Devi has since expired the case against them abated.

3. On receiving report from the investigating agency, the SDJM directed issue of notice to the informant and at that juncture of time the informant approached this Court invoking jurisdiction u/s 482 CrPC, vide CRLMC No. 2543 of 2005 which was disposed of by this Court directing as follows:

It is expected that a judicial officer will pass order after going through the relevant documents in accordance with law and the decision of the apex Court on the point filed before him. So I do not think it proper to admit the case. The SDJM, Rourkela will pass appropriate orders.

On receiving the order of this Court the SDJM after perusing the Case Diary and other materials and being satisfied about commission of offences under Sections 498-A/302/304-B/201/34 IPC took cognizance thereof and finding sufficient ground to proceed against five petitioners before this Court issued NBWA against them. The petitioners challenge the said order in this CRLMC.

4. According to Mr. Debasis Panda, learned Counsel for the petitioners, once the SDJM had issued notice to the informant after receiving final report from police, he had no jurisdiction to take cognizance of the offences alleged or issue process without following the provisions of Section 202 CrPC. He forcefully submitted that after receiving a protest petition the SDJM ought to have registered the same as a Complaint Case and the provisions made in the CrPC to deal with a Complaint Case ought to have been strictly followed. Failure to do so has vitiated the order of the SDJM. In short, according to Mr. Panda, if the cognizance taking Magistrate after going through the materials is satisfied that a prima facie case is not made out and issues notice to the informant for filing protest petition, then without registering the protest petition as a complaint case and without following the

procedure of Section 202 CrPC he cannot take cognizance of an offence and issue NBWA against the accused. He further submitted that in the present case the SDJM having not followed the said provision, has acted illegally and the impugned order is liable to be quashed. In support of his submission Mr. Panda relied upon several decisions, but then as there is no quarrel with the legal proposition advanced by him, I refrain from dilating on that.

5. M/s. G. P. Mohanty and M. S. Panda, learned Counsel appearing for the informant in the aforesaid G.R. Case, at the other hand took this Court through the order-sheets of the Court below and submitted that in fact the said Court initially had not applied its mind to the final report submitted by police. It only issued notice to the informant in consonance with the provision of Section 173(2) (ii) Cr.P.C. Drawing attention of this Court to the notice issued to the informant, it was submitted that the Court below had never called upon the informant to file any objection and, as such, the submission of the learned Counsel for the petitioners are not applicable to this case. In short, according to the learned Counsel for the informant if the Magistrate after applying his mind to the police papers arrived at a prima facie conclusion to accept the final report, he ought to have called for a protest from the informant and only in that event he was required to register the protest petition as a Complaint Case and proceed with the matter. But in the present case, it is submitted that the Magistrate had not applied his mind to the Case Diary and other materials produced by the prosecution and/or the final report and had only issued notice summoning the informant to attend the Court on a date to which the case had been fixed for hearing on acceptance or otherwise of the final report submitted by police. It is submitted that the SDJM acted strictly in consonance with law and the submissions of Mr. Debasis Panda are unfounded.

6. I have heard counsel for the parties at length. The present case has a chequered career having travelled to this Court earlier more than once. As would be evident from the facts narrated above, the unfortunate incident took place in the year 1997. Although more than nine years have elapsed in the meanwhile the case is lying at cognizance stage. Admittedly after completion of investigation into the case the investigating agency has found that in fact offences under Sections 498-A/302/201/34 IPC had been committed. It also named the five petitioners as the accused. But then it concluded that "substantial evidence collected so far was not sufficient to lay charge-sheet against them" and submitted final report.

7. Section 173 CrPC deals with the report required to be filed by the police officer on completion of investigation.

Sub-section (2) in Clause (i) of the said Section provides that as soon as investigation is completed the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government stating the particulars as enumerated in the said provision.

Clause (ii) of Sub-section (2) also provides that the investigating officer shall also communicate the action taken by him to the informant.

Rule 181 of the Police Manual deals with submission of final report. It stipulates that in all cases dealt with u/s 173 or Section 157(b) CrPC, the investigating officer shall cause notice on the complainant or informant and send the duplicate duly endorsed by the complainant or informant to the Magistrate as soon as practicable. In the case in which investigation is refused, the duplicate copy of the notice shall be attached to the copy of the FIR sent to the Court.

Thus a cumulative reading of Section 173 CrPC and Rule 181 of the Police Manual clearly leads to an irresistible conclusion that after submission of final report, law mandatorily requires that the informant should be communicated of the said fact.

8. In the case at hand, the final report was received in Court on 30th June, 2005. On the same day without perusing the report or applying his mind the SDJM directed issue of notice to the informant. The notice issued reveals that the informant was summoned to attend the Court on 30th September, 2005 to which date the case had been adjourned for hearing as to acceptance or otherwise of the final report submitted by police after investigation.

9. It is no more *res Integra* that before a Magistrate takes cognizance of an offence in consonance with Section 190 CrPC he must apply his mind to the contents of the petition and arrive at a *prima facie* conclusion with regard to commission of the offence or otherwise. Taking cognizance of offence is a mental act and also a judicial act and ordinarily means that the concerned Magistrate after applying his mind to the materials made available by prosecution *prima facie* comes to the conclusion that there is a case which requires to be inquired into. If the police report and the materials filed therewith are sufficient to satisfy the Magistrate that he should take cognizance, his power is not affected by submission of the final report by the investigating agency.

10. The Magistrate can ignore, in given circumstances, if materials are available in the case record, the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from investigation and take cognizance of an offence if he thinks fit in exercise of the power u/s 190(1)(b) CrPC and direct issue of process to the accused. The Magistrate is also not bound in such situation to follow the procedure laid down in Sections 200 and 202 for taking cognizance of an offence u/s 190(1)(a) though it is open to him to act under Sections 200 and 202 CrPC also. The Magistrate can take into account the statements of the witnesses examined by police during investigation and take cognizance of an offence and direct issue of process to the accused. In other words, the Magistrate can take cognizance of an offence even if police report is to the effect that no case is made out. In all cases he need not follow the provision of Sections 200 and 202 CrPC, as has been held by the Supreme Court in the case of *India Carat Pvt. Ltd. Vs. State of Karnataka and Another*, .

11. In the present case, as would be evident from records, on the date the final

report was received, without applying his mind, the Magistrate mechanically directed issue of summons to the informant u/s 173(2) CrPC and Rule 181 of the Police Manual and called upon him to attend the Court on the date fixed for consideration of the final report submitted by police. On the date fixed for consideration of the final report, the Magistrate, as it appears, carefully went through the materials placed before him by the investigating agency and found the following incriminating circumstances:

(i) Accused Umashankar had illicit relationship with co-accused Laxmi Kumari Poddar prior to his marriage and even after his marriage with Sobha, the said illicit relationship remained unabated for which the married wife Sobha has protested or refused him to refrain from that illicit intimacy;

Sobha was being abused and assaulted by accused Umashankar and the said torture resulted abortion of her pregnancy.

(ii) Sobha conceived for the second time and Dr. Smt. P.N. Mohanty, who medically checked up her, was requested by Sobha not to disclose the said pregnancy before accused Umashankar;

(iii) Witnesses Gangabai Sahoo, the maid servant of accused's family and Sukadev Prasad, Bijaya Kumar Porohit so also others provided materials to the I.O. that the victim Sobha was being tortured, assaulted and ill-treated by accused husband Umashankar, his father Satyanarayan and mother Geeta Devi;

(iv) On 10.9.97 Sobha had written a letter to her elder sister Sushama at Berhampur informing that both physical and mental torture were given to her by her husband;

(v) On the morning of 16.9.97, i.e. the alleged date of missing of Sobha, the accused Umashankar inflicted brutal assault on his wife Sobha and the co-accused Satyanarayan was found instigating accused Umashankar to go on with assault;

(vi) In the evening of same day i.e. on 16.9.97, the in-laws of Sobha harboured a rumour in the locality that Sobha went missing from the house at Kacheri Road, Rourkela in between 4.00 to 5.30 p.m. on the same date;

(vii) At 9.00 to 10.00 p.m. on. 16.9.97 while standing in front of his own house, Ashok Kumar Agarwal, the neighbour of the accused's family noticed Sabitri Devi, the elder mother-in-law of Sobha raising shouts "MURGEI, MURGEI," The said witness further stated before the I.O. that since that part of time Sobha went untraced from his sight;

(viii) Witness Sukadev Prasad (Mistry), Govind Panda (Helper) and Saraju Thakur (Barber) who were running a saloon or working there situated in the close vicinity of the house of the accused persons resiled from their earlier statement u/s 161 of the CRPC recorded by the; previous I.O. and stated before the Magistrate u/s 164 of the CrPC during the course of re-investigation. To speak in

other words, previously they had stated before the I.O. who filed the charge-sheet u/s 498-A IPC that they had seen Sobha going out of the house in a rickshaw on the relevant date, but u/s 164 CrPC they made statement during course of re-investigation denying to have been Sobha going out of the house of the accused persons on 16.9.97 evening;

(ix) Gangabai Sahoo, the maid servant stated before the I.O. that on 15.9.97 morning she saw Sobha in a depressed mood sitting on roof top near the water tank of the house of the accused writing something on a plain paper and to the query of Gangabai, Sobha replied "you cannot understand now and will know everything later";

(x) Gangabai as usual attended her duty in the house of accused persons in the morning of 16.9.97 and had occasion to see Sobha and talked with her. On 17.9.97 when she came to her duty heard Sobha going missing since the last date;

(xi) Gangabai has further stated before the I.O. that to her utter surprise she found Sobha in a sitting posture dead wearing a white red blue printed saree amidst a heap of gunny bag by the side of water reservoir on the ground floor near the staircase. She has further materially stated before the I.O. that she raised a shout aiming at accused Geeta and sometimes after while she was leaving the house after her work, through the staircase, Sobh's body was no more there. On returning to her house she narrated the incident to her husband Ful Singh San;

(xii) In the intervening night on the date of 17/18.9.97 witnesses namely, Ghisalal Sharma and Ashok Kumar Agarwal had seen the accused persons, namely, Umashankar, Satyanarayan, Rajkishore, Gouri, Jagdish Prasad and Hari driver loading a gunny bag containing some heavy materials being tied at the neck in their Tata Sumo vehicle standing near Gali Road which was emitting bad rotten smell as per their statement before the I.O. and those accused persons were also carrying a basket covered with napkin and proceeded in their vehicles and since then Sobha has not returned or seen;

(xiii) Witnesses, namely, Dhruba Pati, Ramesh alias Hari Dhanwar, Ghishlal Sharma, Vijay Purohit, etc. had stated before the I.O. that following the rumour of missing of Sobha in the house of the accused persons at Kacheri Road and also inside their own premises at Vedvyas, at the instance of the accused persons, Puja and Brahma Bhajan, etc. were performed; and

(xiv) The I.O. has further seized papers and collected materials to the effect that Sobha had made some undated writings begging excuse to her husband Umashankar and promising to obey all his commands in future before her disappearance, she had put off all of her wearing ornaments, the conduct of the accused's family in driving out their employees, namely, Hari Driver, Govinda, Sukadev Prasad, Sitaram Jha, Ramesh Dhanwar and others out of the house following the alleged occurrence, the witnesses namely, Gangabai and her

husband were threatened by the accused persons, no step was taken by the accused at their level to search for the missing victim, and accused Umashankar managed to obtain an ex parte decree of divorce against the wife Sobha, etc.

12. Law is well settled that on receipt of final report a Magistrate has several courses open to him. He after due application of mind if prima facie satisfied about commission of the alleged offence may differ from the conclusion arrived at by police and may take cognizance of the offence at once and issue process to the accused; if after application of mind he is not satisfied with the investigation may direct police to conduct further investigation; and, last but not the least, if he decides to accept the final report then and then only he may issue notice to the informant to file a protest petition, if any. In the event a protest petition is filed, he has to register the same as a complaint case and deal with the same as per Chapter XV of the Code of Criminal Procedure. In the case at hand that stage had not come, inasmuch as the Magistrate never applied his mind nor did arrive at the conclusion that he was going to accept the final report. Thus, according to this Court there was no need to register the objection filed by the informant, after receipt of the notice as contemplated u/s 173 CrPC and Rule 181 of the Police Manual, as a complaint case and proceed with that. The action taken by the Court below was just, proper and in consonance with the ratio of the decision of the Supreme Court in India Carat case (supra). The order impugned also reveals that SDJM examined the materials on record threadbare and for valid reasons arrived at his conclusions. The said order does not call for any interference.

13. In the result, I am not inclined to interfere with the impugned order and dismiss this CRLMC. However I grant liberty to the petitioners to raise all their submissions at the relevant stage in course of the trial as may be advised.