

(2000) 05 OHC CK 0008

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 4241 of 1999

Upendra Khuntia and Others

APPELLANT

Vs

Smt. Bijayalaxmi Das and Another

RESPONDENT

Date of Decision : 02-05-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 202, 210, 319, 482
Penal Code, 1860 (IPC) — Section 294, 323, 325, 34, 341

Citation : (2000) 05 OHC CK 0008

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : D. Nayak, S. Swain, B.B. Mohapatra and P.K. Mishra, for the Appellant; M. Sinha, J.K. Mohanty and A.K. Behera and Addl. Standing Counsel, for the Respondent

Judgement

L. Mohapatra, J.—This is an application u/s 482 of the Code of Criminal Procedure filed by the Petitioners challenging the order dated 11-2-1999 passed by the learned S.D.J.M., Balasore taking cognizance under Sections 294/323/325/341/448/ 354/506/34 of the Indian Penal Code.

2. Learned Counsel for the Petitioners submits that one Siba Deo lodged an F.I. R. through his wife, opposite party No. 1 on 16-1-1997 on the allegations that on the same day morning when the husband of opposite party No. 1 was absent in the house, the Petitioners and five others went there and tried to outrage the modesty of the opposite party No. 1 and her daughter and then assaulted the opposite party No. 1 and her sister-in-law. It is also alleged that the Petitioners threatened them with dire consequences. On the basis of the F.I. R. Khantapada Police Station Case No. 9 of 1997 was registered for the alleged offences under Sections 344/394/354/323/448/506/34, I.P. C.

On completion of investigation charge-sheet was submitted and the learned Magistrate in G.R. Case No. 65 of 1997 took cognizance under Sections 341/354/323/448/506/34, I.P.C. After cognizance was taken the Petitioners 2

and 3 and two other accused persons surrendered before the learned Magistrate on 2-9-1997 and they were allowed to continue on previous bail.

Learned Counsel for the Petitioners submits that in course of trial on 2-11-1998 the opposite party No. 1 and another witness were examined, cross-examined and discharged. Certified copy of the order dated 21-1-98, 12-5-97, 2-9-97, 5-5-98 and so on are filed before this Court as Annexure-1.

On 3-11-1998 the opposite party No. 1 filed a complaint petition before the S.D. J.M., Balasore on the self-same allegations as mentioned in the F.I. R. and the said complaint was registered as I.C.C. No. 386 of 1998 challenging offence committed under Sections 294/323/325/342/448/506/34, I.P. C. In the said complaint enquiry u/s 202 Cr. P.C. was taken up and the learned Magistrate took cognizance under Sections 294/323/325/341/354/448/506/34 of I.P. C. against the eight accused persons and the said order is challenged before this Court.

3. Learned Counsel for the Petitioners submits that since on the allegations made in the First Information Report the G.R. case has been registered and after taking of cognizance trial has commenced, complaint case is no more maintainable and it was for the court to alter the charge or add other persons, who were not charge-sheeted on the basis of evidence available to that effect u/s 319, Cr. P.C.

4. Learned Counsel for the opposite party No. 1 submits that there is no bar under the Cr. P.C. to file complaint on the self-same allegations, if in the police investigation some persons have been left out or in the event with regard to some offences the charge-sheet is silent. Learned Counsel relies upon decisions reported in *Banamali Panda and Others Vs. Bharat Chandra Batik and Another*, : *Nunaram and Others Vs. State of Rajasthan and Another*, ; and *A.I.R 1985 S.C. 67 (Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Ors.)* in support of such contention. In the G.R. Case there are eight accused persons including three Petitioners before this Court and in the complaint case also accused persons are same. In the G.R. Case by order dated 12-5-97 cognizance has been taken under Sections 341/354/323/448/506/34, I.P. C. whereas in the complaint case cognizance has been taken under two more offences under the Penal Code in addition to the offences under which cognizance was taken in G. R Case and these two offences are Sections 294/325 of I.P. C.

There is no proposition of law that on the self-same facts complaint case as well as G.R. Case cannot be maintainable. Section 210, Cr. P.C. prescribes that (1) when in a case instituted otherwise than on a police report (hereinafter to as a complaint case), it is made to appear to the Magistrate, during the course of enquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the Investigating police officer u/s 173 and on such report cognizance of any offence is taken by the Magistrate against any person

who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

So far as the present case is concerned, when the complaint petition was filed, trial in G.R. Case had already started as is evident from the order dated 2-11-98 and both the cases were pending in the same Court.

As a matter of fact, learned Counsel for the Petitioners submits that while entertaining the complaint case the learned Magistrate had called for the record of the G.R. Case. Under the circumstances, both the G. R Case and the complaint Case should have been clubbed together and tried.

5. In view of the admitted position that the allegations made in the complaint case as well as in the G.R. Case are same and that the accused persons in both the cases are also same, it is directed that the learned S.D.J.M., Balasore shall club the G.R. Case No. 65/1997 and I.C.C. No. 386/98 and try both the cases in accordance with law.

The Criminal Misc. Case is disposed of with the aforesaid observation and direction. Crl. Misc. Case disposed of.