

HIGH COURT OF ORISSA : CUTTACK

CRIMINAL MISCELLANEOUS CASE NO.1428 OF 2008

In the matter of an application under section 482 of the Code of Criminal Procedure.

Pramod Kumar Bastia Petitioner

-Versus-

State of Orissa Opp. Party

For Petitioner : M/s. Biswajit Mohanty-3,
K.K.Goya & P.K.Behera.

For Opp. Party : Addl. Govt. Advocate.
For the Victim : Mr. M.K.Mohanty-2

P R E S E N T:

THE HON'BLE MR. JUSTICE INDRAJIT MAHANTY.

Date of hearing & Judgment-28.01.2010

I. Mahanty, J. In this application under section 482 Cr.P.C., the petitioner has sought for quashing of the criminal proceeding in G.R. Case No.819 of 1992, arising out of Jagatsinghpur P.S. Case No.381 of 1992 pending before the learned S.D.J.M., Jagatsinghpur for the offence under section 376 I.P.C..

2. Learned counsel appearing for the petitioner submits that while the alleged offence took place in the year 1992, in the meantime, the informant- Krushna Chandra Nayak has expired for which reason the prosecution would measurably fail to prove the allegations against the petitioner and further, in the meantime also the victim-Sarala Nayak has got married to some other person and does not want to proceed with the case in view of the compromise reached between the parties and therefore, the criminal proceeding pending against the petitioner may be quashed.

In support of his contention, learned counsel for the petitioner placed reliance on a decision of this Court in the case of **Sri Ajaya Dalua Vrs. State of Orissa and another**, 2007(II) OLR 444 whereby the learned Single Judge by his order dated 17.8.2007 quashed the criminal proceeding initiated for the offence under section 376 IPC, relying on an affidavit sworn to by the alleged victim and concluding that since the victim would be adversely affected in her family life and has expressed her desire not to depose in the case, therefore, no fruitful purpose would be served by keeping the criminal proceeding pending.

3. Mr.Biplab Das, on behalf of Mr.M.K.Mohanty (2), learned counsel for the victim, supports the prayer made by the petitioner and has filed an affidavit sworn to by the victim stating therein that during the course of investigation her father Krushna Chandra Nayak has expired on 5.8.2007 and even after completion of investigation since long, the trial has yet to commence and the matter is pending for about 18 years. Further since she, in the meantime, has got married and blessed with three children, she supports the prayer of the petitioner for quashing of the criminal proceeding.

4. In the light of the facts narrated herein above, the essential question that arises in the present case for consideration is as to

whether a criminal proceeding for an offence under section 376 IPC, (which is not compoundable), ought to be quashed in exercise of power under section 482 Cr.P.C, for the reasons as has been noted herein above.

5. In the present case at hand, it appears that late Krushna Chandra Nayak, the father of the victim had lodged an F.I.R. before the I.I.C., Jagatsinghpur Police station alleging that the accused-petitioner had kept sexual relationship with his daughter Sarala Nayak who was a student of Class-IX in Pranakrushna Memorial Vidyapitha where the accused-petitioner was a school teacher and as a consequence of which his daughter became pregnant. It is further alleged that keeping in view the future of the victim, she underwent medical termination of the pregnancy and even though the informant reported the matter to the President of the Managing Committee of the School and the school authorities had assured the informant to take action against the teacher who had committed the crime, while no action was taken, he was compelled to file an F.I.R. against the petitioner.

6. In the petition, the stand of the petitioner is that he is a Government employee and presently working as an Assistant Teacher of Ballipata High School and is regularly attending the classes in the school. It is further averred in the petition that "the investigating agency never informed the petitioner about institution of the case and behind his back, charge sheet has been filed showing the petitioner as an absconder and the trial court took cognizance of the offence and directed issue of N.B.W. against him.

7. In the light of the facts as narrated herein above, it clearly shocks my judicial conscious that a person who is alleged to have raped a minor and that too a student, he was teaching in the school, has managed to subvert the course of justice and has continued as a

teacher in a Government School for the last 17 years that too, after having been shown as absconder and after an NBW has been issued by the trial court for his apprehension. It is necessary to note the courts' clear disapproval of the manner in which the investigating agency as well as the disciplinary authority have remained inactive for nearly two decades. No disciplinary action has yet been initiated against the petitioner and the petitioner has not yet been apprehended either during the investigation or after filing of charge sheet even though he continues as a teacher in a Government School.

8. I am conscious of the grounds raised by the victim in her affidavit and the clear failure of the judicial system which compelled the victim to file such an affidavit before this Court supporting the prayer of the petitioner for quashing the proceeding. The anguish of the victim and that too of a minor and the obvious delay in apprehension/trial of the accused cannot at all be countenanced. No doubt, the victim has got married in the meantime and has been blessed with three children and is leading a happy conjugal life. But in my considered view, while these may be adequate grounds for the victim to pray for examination 'in camera' and also to seek restraint in publication of her name in any newspaper/electronic media yet the plight of a victim cannot be allowed to be used as a ground in the hands of an accused for seeking quashing of a criminal proceeding.

9. No doubt, the faith of people in the criminal justice system is at stake. In my considered opinion, this is a fit case where the prayer of the accused-petitioner ought to be rejected outright and in the interest of justice, direction should be issued for immediate apprehension of the petitioner (accused). Since the petitioner is working as a teacher in a Government school for the entire period from the date of occurrence. Further direction is issued to the Inspector of Schools, Jagatsinghpur to take immediate action against the accused-petitioner by initiating

appropriate disciplinary action/suspension. It must never be forgotten that where the 'Rule of law' ends, anarchy begins.

10. In my considered view, the decision cited by the learned counsel for the petitioner in the case of **Ajaya Dalua** (supra) no provision of any law has been cited therein for the purpose of reaching at the conclusion. On the other hand, in the case of **Rama Paswan and Others Vrs. State of Jharkhand**, (2007) II SCC 191, the Hon'ble Supreme Court (although in a different context) in paragraph-5 of the judgment came to hold as follows :

“..... The High Court was of the view that the compromise petition which was annexed to the petition under Section 482 of the Code referred to purported compromise between the parties. The High Court noted that Section 376 IPC is not compoundable and when the victim was examined and cross-examined during trial, the prayer to recall the victim is not acceptable. Accordingly, the petition was rejected.”

11. Placing reliance on the judgment of the Apex Court and the facts noted herein above, I am of the view that since an offence under section 376 IPC is non-compoundable and the petitioner-accused is alleged to have committed the offence against a minor student, in a school where he was a teacher, granting the prayer for quashing the proceeding would not sub-serve the ends of justice.

12. Accordingly, the CRLMC stands dismissed with the observations and directions given herein above.

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I. Mahanty,J.

ORISSA HIGH COURT : CUTTACK
January 28, 2010/KCP

CONTC No.607 of 2004

12. 29.1.2007

This contempt petition has been filed for non-compliance of an interim order passed during the pendency of W.P.(C) No.4250 of 2000. Since today we have disposed of the main writ application, this contempt petition stands disposed of in terms of the direction given in the writ application. However, the petitioner is at liberty to file a fresh contempt petition in the event the directions given in the writ application are not complied with.

The contempt petition is disposed of.

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A.K.Ganguly,J.

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I. Mahanty,J.