

ORISSA HIGH COURT: CUTTACK

CRLMC Nos. 2187 and 2188 of 2008

In the matter of applications under Section 482 of the Code of Criminal Procedure.

In CRLMC No. 2187 of 2008

Tachhu @ Kachhu Rout and others *Petitioners*

-versus-

Jayanti Biswal and another *Opposite Parties*

For petitioners : M/s. P.R.Chhatoi & A.Mohanty

For opp. parties : M/s.J.Katikia & D.Rout

In CRLMC No. 2188 of 2008

Radhashyam Biswal and others *Petitioners*

-versus-

Tachhu @ Kachhu Rout and another *Opposite Parties*

For petitioner : Mr.J.Katikia

For opp. parties : Mr.P.R.Chhatoi (O.P.1)

P R E S E N T :

THE HONOURABLE DR. JUSTICE B.R.SARANGI

Date of hearing: 28.6.2013 | Date of judgment : 28.06.2013

Dr. B.R.Sarangi, J. Since both the cases are case and counter case filed by the parties, they are heard together and disposed of by this common judgment.

2. The order dated 22.10.2006 passed by the learned J.M.F.C., Banpur in G.R.Case No. 95 of 2006 taking cognizance of the offence under Sections 294,323,354,324,307/34, IPC against the petitioners is assailed in CRLMC No.2187 of 2008. Similarly, the order dated 21.11.2006 passed by the learned J.M.F.C., Banpur in G.R.Case No. 94 of 2006 taking cognizance of the offence under Sections 448, 323, 294, 354, 307, 506/34, IPC against the petitioners is assailed in CRLMC No.2188 of 2008.

3. Learned counsel for the petitioners file their respective affidavits in both the cases in Court today stating that they are co-villagers and the dispute has been amicably settled between them and they are now living peacefully and cordially in the village. Accordingly, they pray that as per the settled position of law, the proceedings initiated by the parties against one another be quashed. The affidavits be kept on record.

4. In view of the fact that the dispute between the parties has been settled amicably, it would not be in the interest of justice to further prosecute the accused persons to rake up the matter, which has been closed. The apex Court as well as this Court time and again observed that quashing of the cognizance in respect of non-compoundable offences by the High Court is permissible in appropriate cases. The apex Court have clearly observed that in exercise of jurisdiction under Section 482, Cr.P.C., the High Court can quash the

proceedings where the parties approach for compounding the offence even in a non-compoundable offence as in such situation chance of conviction becomes bleak. See: **AIR 1988 SC 2111 (Mahesh Chan and another v. State of Rajasthan), (1988) 1 OCR 564 (Md.Khaliur Rahaman v. State of Orissa and another), (1994) 7 OCR 207 (Sudam Charan Barik v. State and others) and 1996(1) OLR 488 (Hari Mohapatra and another v. State of Orissa and others), (2003) 25 OCR (SC) 99 (B.S.Joshi and others v. State of Haryana and others) and 2005(II) OCR 386 (Kanhua Behera v. State of Orissa).**

5. It is well settled law that power under Section 482, Cr.P.C. has to be exercised sparingly depending upon the facts and circumstances of each case and no strait-jacket formula can be laid down for exercise of such power. The power under Section 482 can be exercised by the High Court to prevent abuse of the process of any Court or to secure the ends of justice.

6. In the facts of the present case, this Court feels that it is a fit case where the criminal proceeding should be quashed. The occurrence was outcome of a clash between the co-villagers and the matter has been amicably settled. Since the co-villagers have amicably settled the dispute and do not want to prosecute each other, it would not be in the interest of justice to continue the criminal proceeding. The continuance of the criminal proceeding is likely to re-open the wound. Instead of re-opening the wound by forcing the co-villagers to fight out criminal cases, a healing touch is necessary so that they can live in

peace and amity. The object of penal law is not merely punitive. One of the objects is to maintain peace and harmony in the society. If peace and harmony can be brought about by amicable settlement, especially when large number of people are involved, it would not be proper to pursue a path of retributive justice. In the facts of the present case, I feel interest of justice would be better served in giving a decent burial to the unfortunate incident by quashing the criminal proceedings.

7. Accordingly, both the CRLMCs are allowed and the criminal proceedings in G.R.Case Nos. 94 of 2006 and 95 of 2006 pending in the court of learned J.M.F.C., Banpur are quashed.

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Dr.B.R.Sarangi, J.

Orissa High Court, Cuttack
The 28th June, 2013/**PKSahoo**