

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2757 of 2015

AFR

Umesh Chandra Mallick

....

Petitioner

Mr. A. Das, Advocate

-Versus-

State of Orissa

....

Opposite Party

Mr. Tapas Kumar Praharaj, SC

CORAM:

JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT:01.12.2022

1. In the case at hand, the petitioner has assailed the correctness of the impugned order dated 13th May, 2015 passed in S.T. No.12 of 2015 by the learned Sessions Judge, Phulbani for having declined to discharge him from the alleged offences moved by an application under Section 227 Cr.P.C. on the grounds inter alia that the parties were in a consensual relationship from the inception, the fact which was completely lost sight of while framing the charges under Sections 376, 294 and 506 IPC which is, therefore, liable to be quashed.

2. As it appears, the informant, namely, the victim lodged an FIR, consequent upon which, Sadar Phulbani P.S. Case No.18 dated 10th February, 2012 was registered under Sections 493, 417,294 and 506 read with 34 IPC but finally the petitioner stood chargesheet under Section 376 IPC with allied offences and thereafter, the learned S.D.J.M., Phulbani took cognizance of the same by order dated 13th August, 2012 and later to the commitment, at the stage of framing of charge, he filed an application for discharge but the

same was rejected by the impugned order dated 13th May, 2015 under Annexure-3 which is currently under challenge.

3. Heard Mr. A. Das, learned counsel for the petitioner and Mr. T.K. Praharaj, learned SC appearing for the State.

4. Mr. Das, learned counsel for the petitioner submits that the parties have had a relationship on consent considering which the learned court below could not have framed charge under Section 376 IPC. It is contended that having regard to the peculiar facts and circumstances of the case and for the fact that the informant with a view to harass the petitioner and to wreck vengeance lodged the FIR and initiated the criminal action which was not duly appreciated by the learned Sessions court and therefore, in exercise of jurisdiction under Section 482 Cr.P.C., the proceeding should be quashed and for that matter the impugned order under Annexure-3 with a consequential direction discharging the petitioner. While contending so, Mr. Das cited a decision of the Apex Court in the case of **Vinod Kumar Vrs. State of Kerala (2014) 5 SCC 678** and a judgment of this Court in **Akhaya Kumar @ Babua Parida Vrs. State of Orissa (1998) 14 OCR 612**, wherein, under similar circumstances, the charge of rape was quashed. Hence, according to Mr. Das, in the present case as well, the learned court below erred in framing charge under Section 376 IPC.

5. Mr. Praharaj, learned SC on the other hand submits that the learned Sessions court committed no wrong or illegality in framing charge for an offence of rape on submission of chargesheet and commitment vis-à-vis the petitioner which is supported by the facts alleged in the FIR so also other materials collected during the investigation. It is further submitted by Mr. Praharaj that there has been deception all through which is clearly evident from the FIR and the decisions cited by the defence are inapplicable.

6. The law is well settled with regard to exercise of inherent jurisdiction under Section 482 Cr.P.C. which has been elaborately discussed and illustratively mentioned in the decision of the Apex Court in **State of Haryana and others Vrs. Ch. Bhajanlal and others 1992 Supp (1) SCC 335**. In fact, the Apex Court in the aforesaid case referred to the judgment in **R.P. Kapur Vrs. The State of Punjab AIR 1960 SC 862**, which is a celebrated judgment on the subject.

7. In **Vinod Kumar** (supra), the Apex Court in the peculiar facts and circumstances of the case found the relationship between the parties to be consensual and therein the consent of the victim was based on her own belief that she had duly married the accused (her faith permitting polygamy) and she being aware of previous marriage of the accused and in the aforesaid backdrop, it was held and observed that there was absence of false promise, inducement, persuasion or mis-statement of fact and thus, the accused cannot be charged of rape. In the case of **Akhaya Kumar @ Babua Parida** (supra), the victim never alleged anything adverse against the accused rather in her statement under Section 164 Cr.P.C. she categorically claimed about no rape committed against her rather she cohabited on the false pretext of marriage. The deception is the basic ingredient in an offence of rape where under a false promise of marriage, the consent of the victim is obtained, which is clearly understood from the judgment in **Vinod Kumar** (supra). In so far as the present case is concerned, there was no such false belief on the part of the victim, who rather alleged to have agreed for cohabitation under a promise of marriage from the side of the petitioner which was later found to be false. Whether the petitioner had no such intention to deceive the victim but was innocently involved with her and later their marriage did not materialize is a matter which would decide as to if a charge of rape is committed or not. Law is settled that in absence of any such ill-

intention in obtaining the consent of the victim under a promise of marriage cannot be a case of rape which has to be determined in the facts and circumstances of a particular case. If there is a natural way of love and affection exchanged between the parties and even when the accused had promised to marry the victim and under certain situations, such marriage is not materialized, he cannot be fastened with a charge of rape which may be a case of mere breach in obligation.

8. So far as the present case is concerned, the victim informant alleged that she had been in a relationship with the petitioner for nearly three years prior to the lodging of the FIR but when her marriage was to be settled elsewhere, the latter did not agree to marry her and in the meantime, she became pregnant and suddenly was abandoned. According to the allegations in the FIR, the petitioner not only abandoned the victim but he disappeared and did not return to which on the decision of the village men, she was brought to the house of the petitioner, whose family however did not accept rather threatened her with dire consequences. The conduct of the petitioner is somewhat unusual and there may be an inference about his guilty intent from the very inception for which he abandoned the victim and before that left her pregnant. In other words, it may not be incorrect to someone allege the petitioner that he did not have the honest intention to marry the victim which was apparent from his conduct. But then to allege that the petitioner was having no intention or was deceptive and fraudulently obtained the consent of the victim for the purpose of cohabitation with a false promise of marriage without verifying the evidence during trial would be grossly unjustified. However, on a bare reading of the FIR and from the conduct of the petitioner, suspicion is abound which led to the allegation of sexual mischief against him but whether it was in fact being an overt act or

innocent involvement though with a promise of marriage not having been later materialized shall have to be ascertained on receiving evidence during trial. Having said so, the Court is of the considered view that the decisions in **Vinod Kumar** and **Akhaya Kumar @ Babua Parida** (supra) cannot straightaway be applied to the present case since are distinguishable and befitting the facts of the cases. Again the decision in **Vinod Kumar** (supra) is a judgment in appeal against conviction though in **Akhaya Kumar @ Babua Parida**, inherent jurisdiction was exercised but a conclusion justified to the facts of the case involved therein. Having discussed so far, the Court is of the inescapable conclusion that the learned court below considering the materials on record cannot be said to have fallen into error in framing charge under Section 376 IPC with other offences after rejecting the plea of the petitioner for discharge moved in terms of Section 227 Cr.P.C. as a prima facie is made out.

9. Accordingly, it is ordered.

10. In the result, with the observations, the petition stands dismissed.

(R.K. Pattanaik)
Judge

TUDU