

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.754 of 2022

Manoranjan Dash @ Manoranjan Das Petitioner

Mr. S.K. Sarangi, Senior Advocate

-Versus-

State of Odisha & Another Opposite Parties

Mr.S.S. Mohapatra, Additional Standing Counsel
Mr. Aurobindo Mohanty, Advocate for O.P. No.2

CORAM:
JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT:03.07.2023

1. The petitioner has filed the instant petition under Section 482 Cr.P.C. for quashment of the criminal proceeding in connection with C.T. Case No. 864 of 2022 pending in the file of learned S.D.J.M., Bhubaneswar corresponding to Laxmisagar P.S. Case No. 62 dated 9th February, 2022 on the ground that the allegations against him are out rightly false.

2. In fact, opposite party No.2 filed a complaint in 1 C.C. Case No. 786 of 2022 for a direction from the court of learned S.D.J.M., Bhubaneswar under Section 156(3) of the Cr.P.C. to the local P.S. to enquire into the allegations made therein and to take action against the petitioner according to law, later to which, Laxmisagar P.S. Case No. 62 was registered on 9th February, 2022 under Sections 417, 420, 376, 354 and 506 IPC. As per the complaint, opposite party No.2 is a working lady and having matrimonial dispute with her husband since past five years, whereas, the petitioner is working in the BDA and both of them have had a friendship since seven years before its filling. It has been alleged in the F.I.R. (Annexure-1) treated so after receiving CRLMC No. 754 of 2022

the complaint that the petitioner subjected the complainant to mental harassment, torture and blackmailed her and also falsely promised her to marry after settlement of the matrimonial dispute. The further allegation in Annexure-1 is that the petitioner always demanded money from the informant and she finding no alternative, had to part with Rs.7,00,000/- (rupees seven lakh) on different occasions along with other valuables. The other mischief and overt acts committed by the petitioner have been described therein. After Laxmisagar P.S. Case No. 62 was registered, the petitioner has approached this Court challenging the initiation of the criminal action pending before the learned Court below in connection with C.T. Case No. 864 of 2022.

3. Heard Mr. Sarangi, learned Senior Advocate appearing for the petitioner and Mr. Mohapatra, learned counsel for the State besides Mr. Mohanty, learned counsel for opposite party No.2.

4. Mr. Sarangi, learned Senior Advocate appearing on behalf of the petitioner submits that the allegations against the petitioner are false and fabricated, inasmuch as, there has been no any harassment caused to opposite party No.2 and the parties were in a relationship and when the marriage between them did not materialize as the former allegedly distanced himself from the latter, the complaint was filed and thereafter, the case was registered under various offences including Section 376 IPC which is not maintainable. By referring to an order of the Apex Court dated 27th July, 2022 in **Mandar Deepak Pawar Vrs. State of Maharashtra & Another (Criminal Appeal No. 442 of 2022)** and the following decisions reported in **2020 (78) OCR 718; 2019(9) SCC 608; AIR 2021 SC 1405; 2010(1) SCC 108** and **AIR 1992 SC 604**, it has been contended by Mr. Sarangi for the petitioner that an offence under Section 376 IPC is not at all made out considering the fact that both the parties had been in a committed

relationship. Furthermore, Mr. Sarangi by placing reliance on the decisions reported in **2006 (Supp II) OLR 856; 2007(2) OLR SC 608** and **2016 (2) OLR 668** would submit that even the offence under Section 420 I.P.C is not made out since it is necessary to prove deception from the very inception with reference to the monetary transactions. It is, therefore, contended that the criminal proceeding at the behest of opposite party No.2, in view of the nature of allegations in Annexure-1 and the fact that the parties were in a relationship for about seven years, would be an abuse of process of court and hence, it is liable to be quashed in exercise of the inherent jurisdiction under Section 482 Cr.P.C.

5. Mr. Mohapatra, learned counsel for the State opposite party No.1 submits that only a case has been registered and currently investigation is in progress and having regard to the seriousness in the allegations made, as revealed from Annexure-1, the criminal proceeding pending in the file of the learned court below should not be quashed at the threshold.

6. Mr. Mohanty, learned counsel for opposite party No.2 supported the above contention of the State and further submitted that opposite party No.2 was already in mental agony due to her matrimonial dispute, taking advantage of which, the petitioner perpetuated the alleged mischief and had also agreed to marry her but since by that time, it was not acceptable to her, the ill-treatment and threat was administered being vindictive. It has been claimed that opposite party No.2 since was blackmailed by the petitioner, she agreed to marry the latter after her matrimonial dispute is settled, however, lastly there was an agreement between the parties on 4th February, 2021 with an understanding that the marriage between them would be held after disposal of C.P. Nos. 41 and 70 of 2019 pending before the Family Court, Bhubaneswar by referring to the objection dated

31st March, 2023 and the mutual agreement as at Annexure-A appended thereto. Mr. Mohanty also submitted that under pressing circumstances, the petitioner extracted money from opposite party No.2 on different dates including an amount of Rs. 50,000/- by cheating to obtain an approved plan of a building from the BDA. It is contended by Mr. Mohanty that no case is made out for exercise of jurisdiction under 482 Cr.P.C. since a prima facie case is proved against the petitioner. According to Mr. Mohanty, as the allegations set out in the complaint constitute offences of cognizable nature, in absence of any malafide, the contention of the petitioner for quashment of the criminal proceeding sans merit. While advancing such an argument, Mr. Mohanty cited the following decisions, such as, **Ramesh Chandra Gupta Vrs. State of U.P. 2022 Live Law (SC)-993; Veena Mittal Vrs. State of U.P. 2022 Live Law (SC) 110; 1992 Suppl. 1 SCC 225 and State of Bihar Vrs. Murad Ali Khan & Others (1988) 4 SCC 1** by concluding that the criminal action against the petitioner calls for no interference.

7. No doubt, in case of a consensual relationship for a considerable period with the wealth of wisdom, if the parties maintained physical relationship given on an assurance of marriage to the victim which for some reason or the other failed to materialize later, any such allegation of rape with a claim that the promise has been broken, it has been held by the Apex Court in **Pramod Suryavan Pawar** (supra) that such a case is not made out, referring to which, the appeal filed by the accused in **Mandar Deepak Pawar** (supra) was allowed and the proceeding was set aside. There is a subtle difference between breach of promise which is made in good faith but subsequently could not be fulfilled and a false promise to marriage. In the former case, for any such sexual intimacy, an offence under Section 376 IPC is not made out, whereas, in the latter, it is, since the same is based on CRLMC No. 754 of 2022

the premise that the promise to marriage was false or fake from the very beginning, which is given on the understanding by the accused that it would be broken finally. Whether, there was merely a breach of promise or any kind of mischief committed by the accused after offering a false promise is a matter of fact. If ultimately from the F.I.R. and material evidence, it is made to suggest that there was no genuine promise from the side of the accused or a false one was offered in order to induce the victim or to obtain her consent to maintain sexual relationship, it would be an act in bad faith and in that case, an offence under Section 376 IPC may be made out but such is not the case where after a long relationship, it is broken and there has been a breach of promise for certain reasons. So therefore, in case of a relationship whether it was consensual or otherwise for the purpose of an offence under Section 376 I.P.C would depend on the nature of accusation and conduct of the parties and in particular, of the accused.

8. In so far as the present case is concerned, the relation between the parties has definitely been an unpleasant one if the complaint and other materials are gone through. If the objection dated 31st March, 2022 of opposite party No.2 is perused, it is made to suggest that the petitioner had disclosed his desire to marry her to which she was not prepared by then but after being threatened to viral their photographs, she agreed but only after the matrimonial disputes are over. It is also pleaded therein that the petitioner later on, even after an agreement dated 4th February, 2021, avoided and denied to marry her. It is further made to appear that opposite party No.2 parted with good amount of money paid to the petitioner claimed to be under compulsion. It is alleged by opposite party No.2 that the petitioner did not respond on and from 16th January, 2022 and even declared not to marry her. In fact, number of allegations of ill-treatment has

CRLMC No. 754 of 2022

been made against the petitioner, if the complaint is read as a whole. Is it that under compelling circumstances opposite party No.2 had to maintain the relationship or she was a consenting party to it all along? If there was an agreement between the parties for marriage, why it failed to materialize? What prevailed upon the petitioner, whether, it was on genuine ground not to marry opposite party No.2 though initially he had agreed? While considering it, one has to be conscious of the kind of relationship between the parties which has been on and off for whatever reasons. Whether the parties involved themselves innocently and maintained relationship which apparently had a bitter end? To straightaway allege sexual misconduct for the marriage not being materialized even with the denial of the petitioner may not be fully justified, if the alleged relationship started genuinely but deteriorated thereafter. The ill-treatment during the subsistence of a relationship cannot always be a reason to suspect the intention of the male partner. Nonetheless, it depends on the nature of accusation, kind of relationship maintained and reason to fell apart with the marriage not taking place to determine the intention of the accused alleged of sexual mischief. All such aspects are to be sincerely examined before concluding that an offence of rape is committed especially when parties are major, educated and well off besides financially independent and fully competent to understand and realise the consequences of a relationship. Without commenting upon the veracity of the allegations, it may not be lost sight of the fact that opposite party No.2 appears to have entered into a relationship which was built upon a friendship at a time when she was not yet divorced. But, it may not be a ground either to completely dismiss the complaint as other allegations have been made therein against the petitioner. What the Court is concerned with is that a sour relationship, if initially started and developed genuinely with a

friendship should not always be branded as a product of mistrust and mischief thereby accusing the male partner of rape. The Court, considering the complaint and other materials is of the view that the entire story unfolded revealed existence of friendship and thereafter, a relationship which was developed under the circumstances narrated and during the initial period, the petitioner was inclined to marry opposite party No.2 to which she agreed later and even a settlement was reached at on 4th February, 2021. Thus, therefore, it may be said that a promise by the petitioner was broken though he had the initial interest and inclination to marry opposite party No.2, who for certain reasons was not ready for it at that point in time. It is alleged that under threat or compulsion, opposite party No.2 agreed for the marriage after she was blackmailed by the petitioner. Interestingly, opposite party No.2 agreed later and even entered into a written agreement with the petitioner in 2021. It indicates that the parties had a difficult time in dealing with each other and managing their relationship which finally worsened leading to separation. From the conduct of both the parties as made to suggest considering the complaint and pleadings, it would not be just and proper to allege sexual mischief against the petitioner, who for reasons unknown declined to marry opposite party No.2. As earlier stated, the parties are educated and well placed and were quite aware of the consequences and still engaged themselves in a relationship which remotely appear to be one sided and having understood the kind of relationship it was developed and had become later on, the Court, keeping in view the settled position of law, which are referred to herein before, reaches at a conclusion that it would not be justified to allege rape against the petitioner, But, in so far as other allegations are concerned, it should be left open for enquiry and investigation.

Manoranjan Dash @ Manoranjan Das Vrs. State of Odisha & Another

With the above conclusion, the Court holds that it needs to interfere only to the extent aforesaid.

9. Accordingly, it ordered.

10. In the result, the petition stands partly allowed. As necessary corollary, the registration of Laxmisagar P.S. Case No. 62 dated 9th February, 2022 for an offence under Section 376 IPC corresponding to C.T. Case No. 864 of 2022 pending in the file of learned S.D.J.M., Bhubaneswar is hereby quashed vis-à-vis the petitioner for the reasons discussed but not for the remainder.

Balaram

