

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 1244 of 2023

Application under Section 482 of Criminal Procedure Code,
1973.

AFR

Saroj Sahoo

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Petitioner

-Versus-

State of Odisha

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Opp.Party

Advocate(s) appeared in this case:-

For Petitioners : Mr. Arun Kumar Das-1,
Advocate

For Opp. Parties : Mr. S.K. Mishra,
Addl. Standing Counsel

M/s. Anirudha Das, A. Das,
S.C. Mishra, K. Behera &
M.S. Hasan, Advocates
[for informant]

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
28th July, 2023

SASHIKANTA MISHRA, J. The petitioner, who is the accused in
G.R. Case No. 179 of 2022 pending in the Court of learned
J.M.F.C., Gondia, has approached this Court in the present
application under Section 482 of Cr.P.C. questioning the

correctness of order dated 05.07.2022 passed by the said Court in taking cognizance of the offences punishable under Sections 417/506/376(1)/366/201 of IPC.

2. The facts of the case, briefly stated are that one 'X' (victim) lodged a written complaint before the IIC of Gondia Police Station on 06.04.2022 alleging therein that she was in love with the accused and that on 04.04.2022 at about 8 p.m., he lured her on the promise of marriage and took her with him to his sister's house in village Nathua. They stayed for the night there. On 05.04.2022 at about 11 a.m., the elder brother of the accused, namely Bijay Sahu and his cousin, Litu assured that they would get them married in Court. So saying they took the couple on motorcycle but left the victim near Nilamadhab Temple at Jhili. Said Bijay Sahu wanted to forcibly take the victim to her own house but she refused. The victim thereafter went to the backyard of the house of the accused with the help of a local woman, Gitanjali Nanda, but she was not allowed inside the house, for which she remained outside through the night being guarded by some local persons. The victim further alleged that the accused asked her to remain in his

house but his family members abused her and threatened to kill her. On such complaint, Gondia P.S. Case No. 97 of 2022 was registered under Sections 363/417/506/34 of IPC. In course of investigation, the statement of the victim was recorded on 06.04.2022, who stated more or less the same thing as her version in the FIR. On 08.04.2022, her statement under Section 164 of Cr.P.C. was recorded before the learned J.M.F.C., Gondia. In the said statement she reiterated the FIR version. Most surprisingly, another statement of the victim was recorded under Section 161 of Cr.P.C. on 30.04.2022. In the said statement she came out with a different version of the alleged occurrence, inasmuch as she alleged that in course of their stay in the house of the sister of the accused, he had forcibly kept sexual relationship with her on the promise of marriage. She further alleged in her statement that while going with the elder brother of the accused and his cousin for court marriage, she was told by them to inform the police that she had no physical relationship with the accused and that if she did so her marriage would be solemnized with the accused but if she did not, they would set fire to her house

and kill her father by running him over by a truck. Investigation having been concluded, charge sheet was submitted on 27.06.2022 under Sections 366/376(1)/417/506/201/34 of IPC. Thereafter, the Court below took cognizance of the aforementioned offences vide the impugned order.

3. Heard Mr. A.K. Das, learned counsel for the petitioner, Mr. S.K. Mishra, learned Addl. Standing Counsel for the State and Mr. A. Das, learned counsel appearing for the victim.

4. Assailing the impugned order, Mr. A.K. Das would forcefully argue that going by the sequence of events taking place beginning from the date of registration of the FIR till submission of charge sheet, it is more than evident that a deliberate attempt was made by the investigating agency to falsely implicate the petitioner in a case of rape and kidnapping. Moreover, this is a case where the victim has changed her version materially from her earliest version of the occurrence. Since the victim is a major girl, aged about 21 years at the relevant time, it cannot be believed that she was coerced to remain silent despite

being raped as alleged by the prosecution. According to Mr. Das, it is a clear case of elopement as the victim admits to have left home with the accused but presumably because of family pressure, the marriage between them was not possible to be materialized for which, a false case was foisted only to put pressure on the accused.

5. Mr. S.K. Mishra, learned Addl. Standing Counsel for the State on the other hand would submit that the victim being a young girl, it was possible that she was coerced by the accused and his family members to remain silent as they had threatened to burn her house and kill her father. It is therefore, not unnatural for her to have not disclosed about the sexual offence at the earliest opportunity. Moreover, the victim's consent was obtained on the false pretext of marriage which is no consent as per Section 90 of the IPC. Mr. Mishra has cited the judgment of the Apex Court in the case of **Pramod Suryabhan Pawar v. State of Maharashtra**, reported in (2019) 9 SCC 608.

6. Mr. Anirudha Das, learned counsel appearing for the victim, while adopting the arguments of the State Counsel would further argue that in addition to the threat,

the victim was also assured that her marriage with the accused would be solemnized if she did not disclose about the sexual offence before the police. Since she was in love with the accused and wanted to marry him, in order to prevent further social stigma she chose to remain silent at the first instance keeping her larger interest in mind.

7. It is to be noted that there is a certain sanctity attached to the statement recorded under Section 164 of Cr.P.C.. It is the settled position of law that the object of recording the statement of a witness under Section 164 of Cr.P.C. is twofold- to deter the witness from changing his stand by denying the contents of his previously recorded statement and secondly, to tide over immunity from prosecution by the witness under Section 164 Cr.P.C. Reference in this regard may be had to the decision of the Apex Court in the case of **R. Shaji vs. State of Kerala**, reported in (2013) 14 SCC 266. In the instant case as already stated, the victim's statement recorded under Section 164 of Cr.P.C. is entirely in consonance with her version in the FIR as also her statement recorded under Section 161 of Cr.P.C.. Attempt was made to introduce a

different version by seeking to record another statement under Section 164 Cr.P.C. Learned Magistrate rightly rejected such petition as it would have rendered the earlier statement nugatory. That apart, such statement would have run contrary to the very object of recording of statement under Section 164 of Cr.P.C. as referred above. Under such circumstances, the second statement of the victim recorded by the I.O. under Section 161 of Cr.P.C. on 30.04.2022, with the obvious intent to offset all that she had said earlier would be a travesty of justice and hence cannot be taken into consideration at all.

8. Before advertng to the merits of the rival contentions advanced by the parties it would be proper to take note of a significant fact. As already stated, the victim's statement under Section 161 was recorded for the first time on 06.04.2022. Two days later, i.e., on 08.04.2022, her statement under Section 164 Cr.P.C. was recorded. Again another statement under Section 161 was recorded by the I.O. on 30.04.2022 and a prayer was made by the I.O. before the Court below on 02.05.2022 for recording of the statement under Section 164 Cr.P.C. of the

victim again. Said petition came to be rejected by the Court below on the same day on the ground that recording of the statement twice will create ambiguity in her own statement. Coming to the sequence of events as narrated earlier, this Court is surprised to note the conduct of the victim. If she was actually sexually assaulted, what prevented her from disclosing it before the police at the first instance. If she could approach the police and submit a complaint alleging withdrawal of the promise of marriage by the accused, which was followed by statements recorded under Sections 161 and 164 Cr.P.C. on the very same lines, what prompted her to add the allegation of sexual assault in her subsequent statement recorded a little more than 15 days later. It must be kept in mind that the victim was aged more than 21 years at the relevant time. Perusal of the case diary produced by the learned State Counsel does not reveal any plausible reason for the I.O. for examining the victim again on 30.04.2022 when her statements had already been recorded twice. In any case, there is no reason as to why the victim was reluctant to disclose about the sexual assault before the Court.

9. In course of arguments, Mr. Anirudha Das, learned counsel appearing for the victim contends that law requires that the version of the victim should be given proper weightage, for being fearful of social stigma, it is not expected of her to come forward readily to disclose about sexual offences involving her. There can be no quarrel with the proposition referred to by Mr. A. Das but then it is equally well settled that it can never be the case that the statement of the victim should always without exception, be taken as gospel truth. Victim's version undoubtedly commands great weight but the same cannot necessarily be universally and mechanically accepted to be free in all circumstances from embellishment and exaggeration. Reference in this regard may be had to the decision of the apex Court in the case of **Raju vs. State of M.P.**, reported in (2008) 15 SCC 133.

10. The version of the victim would find ready acceptance only if it is implicitly reliable and there is a ring of truth in it. The present case is one in which the victim gave a particular version of the occurrence on three occasions and then suddenly turned around to come up

with an entirely new version. The contention that the victim was expecting that she would get married to the accused if she remained silent, does not cut much ice because then it does not stand to reason as to why she would approach the police in the first place, if not to put undue pressure on him. If this much is accepted then the whole story narrated by her becomes doubtful.

11. After going through the facts of the case as narrated before, this Court is of the view that the version of the victim does not inspire confidence at all so as to be accepted.

12. As regards the judgment of the apex Court in **Pramod Suryabhan Pawar** (supra) cited by learned State Counsel it is seen that in the said case the victim was subjected to sexual intercourse on multiple occasions by the accused on the false pretext of marriage. Under such circumstances, it was held that the promise to marry and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relationship,

which is a 'misconception of fact' and therefore, vitiates the woman's 'consent'.

13. The facts in the present case are completely different from the cited case inasmuch as this Court has already held that there is absolutely no acceptable evidence to show that the victim had been subjected to sexual intercourse at all much less on the promise of marriage. The subsequent statement of the victim in this regard has been held to be unacceptable. On the contrary, if the facts of the case and the materials on record are viewed objectively it would reveal an apparent attempt by the victim to entangle the accused in a criminal case apparently to coerce him into a marital relationship.

14. It is well settled that summoning the accused in a criminal case is a serious matter and should not be allowed to run as a matter of course. In this regard, the decision of the Apex Court in the case of **Pepsi Foods Ltd. v. Special Judicial Magistrate**, reported in AIR 1998 SC 128 : (1998) 5 SCC 749 may be referred to. So, while being alive to the need for punishing sexual offenders it is also

the duty of the Court to see that the criminal justice system is not utilized to cause harassment to any person.

15. From a conspectus of the analysis of the contentions raised before this Court and the materials on record, this Court is of the considered view that the criminal proceeding initiated at the instance of the victim, if allowed to continue would amount to abuse of process of Court.

16. Resultantly, the CRLMC is allowed. The proceedings in G.R. Case No. 179 of 2022 of the Court of the learned J.M.F.C., Gondia are hereby quashed.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 28th July, 2023/ A.K. Rana, P.A.