

Anil Kumar Samartha Vs. State of Orissa

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Court : Orissa

Decided On : Dec-04-2001

Reported in : 2002CriLJ1194

Judge : L. Mohapatra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376(2) and 457; Code of Criminal Procedure (CrPC) , 1974 - Sections 161 and 439

Appeal No. : Crl. Misc. Case No. 7444 of 2001

Appellant : Anil Kumar Samartha

Respondent : State of Orissa

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : G.N. Mohapatra, ;B.N. Mohapatra, ;A.K. Sahoo and ;S.K Mahapatra, Advs.

Disposition : Application dismissed

Judgement :

ORDER

L. Mohapatra, J.

1. The petitioner who is alleged to have involved himself in an offence under Section 376(2)(g) read with Section 457 of the Indian Penal Code has approached this Court in this application under Section 439 of the Code of Criminal Procedure for grant of bail.

2. F.I.R. has been lodged by the victim lady on 18-7-2001, stating that she had married one Saheb Badtia in the year 1996 and a son was born out of the marriage. Thereafter she left her husband and stayed in her parents' house and was working in Magnum factory as a labourer. She has also stated in the F.I.R. that since June she is staying in a rented house in Lingaraj Nagar and after closure of the factory she was unemployed and working as a maid-servant in the house of accused-Bulu Kar. At about 10.30 p.m. on 31-7-2001 one Deba Choudhary forcibly entered into her room and committed rape on her. Thereafter, Bulu Kar in whose house she was serving as maidservant and two others in the age group of 25 to 26 years committed rape one after other and left the place.

3. Shri Mohapatra, learned counsel for the petitioner submitted that the petitioner had not been named in the F.I.R. as one of the four persons who committed rape on the victim lady and the petitioner had been shown as to the informant before identification. Reliance is placed by the learned counsel for the petitioner on three decisions reported in 1985 (2) OLR 68 (Ramachandra Giri v. State); (1996) 2 OCR (SC) 164 (Ajit Singh v. State of Haryana) and (1996) 10 OCR 234 : (1996 Cri LJ 2107) (Daun alias Biswajit Patnaik v. State). It is further submitted by Shri Mohapatra that in view of the law laid down in all these decisions, identification by the informant cannot be believed and, therefore, it can safely be stated that there is no material against the petitioner so as to prove his complicity in the offence.

4. Learned Additional Government Advocate referring to the case diary submitted that though the petitioner has not been named in the F.I.R. he has been named by the victim lady in her statement recorded under Section 161, Cr. P.C. and, therefore, it cannot be said that the petitioner is not involved in the offence.

5. In the F.I.R. the informant has named two persons namely Deba Choudhary and Bulu Kar and has also stated that there were two other persons who committed rape on her between the age group of 25 to 26 years. In her statement

recorded under Section 161, Cr. P.C. she has stated that while she along with police officers were searching for the accused persons they saw three of the accused persons standing near the Guest House at Kunjapatna who were identified as Deba Choudhary and Debasis Dash. The other person who has standing near the aforesaid two persons identified by the informant as one of the four accused persons who committed rape on her. On being questioned he disclosed his name as Anil Kumar Samartha, that is the petitioner. She has also in her statement stated about the manner in which the offence was committed.

From the entry dated 2-6-2001 in the case diary it appears that while the police vehicle was moving near Kunjapatna area along with the victim lady in search of accused persons, the victim lady identified three of the accused persons namely Choudhary, Debasis Das and the petitioner. Therefore, contention of the learned counsel for the petitioner that the petitioner was earlier shown to the informant stands on no basis.

6. While considering an application for grant of bail the Court is only required to see whether prima facie case exists or not. Scope of evaluating evidence at the stage for grant of bail is not available to the Court. All the decisions cited by the learned counsel for the petitioner relate to appreciation of evidence at appellate stage after conclusion of trial. After closure of evidence the Court consider the materials available for the purpose of arriving at a conclusion as to whether the accused is to be convicted or not. But while considering on application for bail at the stage of investigation the Court is only required to see whether prima facie case exists or not. While considering bail application the Court is also required to take into consideration the gravity of offence, antecedents of the accused, nature of participation of accused in commission of offence, etc. If prima facie material is available to show that the accused has actively participated in the commission of offence the Court may in its discretion refuse to grant bail. In the present case, at the time of lodging F.I.R. though the victim lady had seen all the four accused persons did not know two of them by name including the petitioner. While searching for the accused persons along with the police officers, she could identify the petitioner along with two other accused persons standing together and, therefore, there is no scope to disbelieve the victim lady.

7. In my view the materials available on record are enough to hold prima facie that the petitioner was involved in commission of offence. I, therefore, do not find any merit in the application and the same is dismissed.

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