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In Re: Thomson, Babul Das

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Court : Kolkata

Decided On : Feb-19-1993

Reported in : (1993)2CALLT122(HC),97CWN888

Judge : Shyamal Kumar Sen and ;Amal Kanti Bhattacharji, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 34, 323, 324, 354, 366 and 376; ;Criminal Procedures Code , 1973 - Sections 401 and 482

Appellant : In Re: Thomson, Babul Das

Advocate for Def. : R. Shiv Saroop, Adv. for Opposite Party No. 1 and ;B.K. Das, Adv. for the Complainant Opposite Party No. 2

Advocate for Pet/Ap. : N.N. Adhikari and ;Shyamali Ganguly, Advs.

Disposition : Petition allowed

Judgement :

S.K. Sen, J.

1. By consent of parties this revisional application is treated to be on day's list and taken up for hearing.

For the purpose of proper adjudication of this revisional application we may take note of the facts on record as appearing from the bail application already filed on

behalf of petitioner No. 1-Thomson. The said bail application contains inter alia the following allegations as appears from paragraphs 1 to 13 of the said application which are set out hereinafter.

'1. That the opposite party No. 2 filed a petition of complaint Under Section 323/324/354/356/376/34 of the Indian Penal Code before the Learned Chief Judicial Magistrate at Port Blair against the petitioners along with others on 24.11.1992 with inter alia the following allegations.

2. That on 13.11.1992 at about 10.30 p.m. onBabul Das along with the petitioner came to the house of the complaint and asked the complainant to follow them with the assurance that she will be married to Babul Das in the house of the petitioner. It has been further alleged that in spite of resistance by the inmates of the family of the complainant the complainant follows them to the house of the petitioner by a scooter standing by. It has further been alleged that after reaching the house of the petitioner she was forcibly given a sindoor on her forehead and she was assaulted by the petitioner while she protested. It has been further alleged that Babul Das forcibly married her and committed sexual assault on her. A document showing their marriage was also signed against her will. She, however, annexed the document along with the said petition of the complaint.

3. Though the aforesaid incident took place on 13.11.1992 the petition of the complaint filed on 11 days after the occurrence and no proper explanation regarding the said delay was made in the said petition of the complaint. The cognizance was taken by the learned Chief Judicial Magistrate and summons and thereafter warrant was issued against the petitioner and petitioner on his turn surrendered before the learned Chief Judicial Magistrate.

4. It has been stated by the petitioner that Babul Das on 14.11.1992 lodged one first information report before the Station House Officer, Dundas Point stating inter alia that on 13.11.1992 while he was sitting by the side of the panshop he was called by the father of the complainant Miss Chandrakala through his eldest daughter in his house. It has been further alleged that Babul Das was offered tea and snacks in the house of Jagan Singh namely the father of the aforesaid complainant Chandrakala and the inmates of the house including Jagan Singh

pressed him to marry Ms. Chandrakala when he refused. Thereafter Babul Das was confined in the house of the said Jagan Singh and he was threatened on the point of Daon for the whole of night and thereafter on the following morning i.e. on 14.11.1992 Babul Das managed to escape from the house and reported the matter to the Police.

5. The Police investigated the matter and filed a chargesheet being chargesheet No. 135/92 dated 1.12.1992 against Jagan Singh and his wife and his son. The said case is still pending.

6. In the aforesaid case where first information report was lodged by Babul Das against the father, mother and brother of Ms. Chandrakala the petitioner has been cited as one of the witnesses.

7. The petitioner states that Cr. Case No. 83 of 1992 initiated by the aforesaid complainant Chandrakala is just a counter blast and the case started by Babul Das on 14.11.1992 where chargesheet has been submitted.

8. The petitioner states that with mala fide intention and for a co-lateral purpose the petitioner who was the main witness in the instant complaint case was filed by Chandrakala 13 days after the occurrence to make out the defence of her father, mother and brother.

9. Petitioner further states that the allegations made out in the petition of complaint does not constitute any offence Under Sections 366 and 376 against petitioner inasmuch as there was no allegations of forceful kidnapping and sexual assult by the petitioner. Infact, in the petition of the complaint the complainant herself admitted that she went to the house of the petitioner by a scooter.

10. The petitioner who surrendered before the learned Chief Judicial Magistrate having information that has been taken on the aforesaid petition of complaint moved the learned Session Judge for bail and by his order dated 11.2.1993 the learned Sessions Judge did not consider the aforesaid position that in the instant case is a counter blast of another criminal case. The learned Session Judge also did not consider that the petition of complaint was lodged without any reasonable

explanation after 13 days of the occurrence. The learned Session Judge did not also consider that the petitioner is one of the charge-sheeted witness in the case started against the father, mother and the brother of the complainant. The learned Session Judge did not consider the fact that the instant petition of complaint was lodged just to make out a defence of the accused in the case started by Babul Das just after the occurence.

11. The petitioner is a law abiding citizen and is a permanent govt. servant having his own residential house and properties in Andamaris and there is no chance of his abscondance. Petitioner further states that in a criminal case where the cognizance has been taken the examination of the witness, there is no chance of tempering with the investigations.

12. Petitioner is the only earning member of his family and unless the petitioner is granted bail the petitioner will suffer irrepairable loss.

13. That petitioner prayed that the certified copy of the order passed by the learned Sessions Judge rejecting the application for bail dated 11.2. 1993 but the same is not available till date. The petitioner has taken out an extract of the order passed by the learned Sessions Judge in the instant case on 11.2.1993 and the same is annexed herewith as Annexure 'A'. The petitioner undertake to file the certified copy of the said order at an early date.'

14. In the aforesaid facts and circumstances the petitioner-Thomson prayed that he may be released on bail on such conditions as the Court may impose.

15. When the said bail application was taken up for hearing at the first sitting of the Court we, however, asked the advocates for the parties if the petitioner No. 2 Babul Das and the complainant opposite party Chandrakala are agreeable to marry and to ascertain the views of the said Babul Das and Chandrakala the following order was passed :

'Let the matter be taken up at 3-30 P.M. to-day. In the meantime the State authorities are directed to produce the accused Babul Das and Thomson from jail in Court at 3-30 P.M. to-day. Complainant opposite party No. 2 will also be present

in Court at that time.

Plain copy of the order duly counter signed by the Assistant Registrar (Court) be given to the Learned Advocates appearing for the parties.'

16. Pursuant to the said order passed in connection with the application for bail Ms. Chandrakala, complainant O/P No. 2 is present in Court and on the question being asked by her Learned Advocate she states before this Court that she is prepared to marry Babul Das. She, however, submits That the case started against her parents and brother being G.R. Case No. 1400/92 dated 14.11.1992 Under Section 342/506/34 IPC (State v. Jagan Singh and 2 Ors.) arising out of FIR No. 167/92 lodged at Dundas Point Police Station should be withdrawn. Parents of Ms. Chandrakala are also present in Court.

17. Babul Das is produced before this Court from the jail custody pursuant to the order passed today on the said bail application of Shri Thomson. On being asked by the Learned Public Prosecutor, Babul Das identifies Ms. Chandrakala and submits that he is prepared to marry Chandrakala. He also submits that the case initiated at the instance of Chandrakala being Cr. Case No. 83 of 1992 Under Section 323/366/354/376/34 I.P.C. pending before the learned Chief Judicial Magistrate, Port Blair should be withdrawn.

18. Thomson accused petitioner is also produced from the bail custody pursuant to the order of this Court made earlier. He submits that he agrees to be a witness to the marriage.

19. In view of the statements recorded, it is clear that both Babul Das and Chandrakala are agreeable to marry each other. In fact, on being further asked by the Court they both agree to marry this evening. The Marriage Registrar Mr. S. A. Awradi is also present in Court today. Parties agree that they will marry according to Hindu rites in a temple, and the said Marriage Registrar also will remain present at the said marriage ceremony and said Marriage Registrar will also record the Marriage.

20. In fact both the petitioner No. 2 Babul Das and the complainant Chandrakala wish to marry each other and the parents of the complainant are also present in Court and give their consent to the proposed marriage which will take place this auspicious Shivaratri evening.

21. Considering the facts and circumstances noted above in our view no useful purpose will be served by keeping alive the criminal proceeding.

22. It is well-settled that Court is entitled to take into consideration any special feature which appears in a particular case and may take into account whether it is expedient and in the interest of justice to permit prosecution to continue. If the Court finds that no useful purpose is likely to be served by allowing criminal prosecution to continue, the Court may while taking into consideration the special facts of the case also quash the proceeding even though it may be at a preliminary stage.

23. In this connection we may take note of the judgment and decision of the Supreme Court in the case of Madhavrao Jiwaji Rao Scindia and Anr. v. Sambhajirao Chandrojirao Angre and Ors. reported in : 1988 CriLJ853 . In the aforesaid decision the Supreme Court in paragraph 7 of the said judgment at page 711 of the said report observed as follows :-

'The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.'

24. In view of the facts and circumstances already noted, the criminal revisioned petition is allowed and all the criminal proceedings being G.R. Case No. 1400/92 dated 14.11.1992 Under Section 342/506/34 IPC (State v. Jagan Singh and 2 Ors.) arising out of FIR No. 167/92 lodged at Dandus Point Police Station and Cr. Case No. 83 of 1992 Under Section 323/366/354/376/34 IPC pending before the Chief Judicial Magistrate, Port Blair are hereby quashed and set aside.

25. Superintendent, Prothrapur New Jail is directed to release forthwith Thomson, S/o Late Ram Prasad and Babul Das S/o Late Parimal Das, the accused persons in Criminal Case No. 83 of 1992 Under Section 323/366/ 354/376/34 IPC filed before the Learned Chief Judicial Magistrate, Port Blair.

26. The Superintendent, Prothrapur New Jail is directed to comply with this order upon production of a plain copy of the operative portion of the order passed in the above case. The S.H.O. PS. Aberdeen is directed to depute adequate Police force at the place and time of marriage of Babul Das and Chandrakala. The said Police force will accompany Babul Das.

Let a plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the Learned Public Prosecutor for communication to the Superintendent, Prothrapur New Jail.

A.K. Bhattacharji, J.

27. I agree.

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