
(2009) 07 OHC CK 0077
In the Orissa High Court

Gangadhar Barik and Another

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 20-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 482
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 302, 304B, 34, 498A

Citation : (2009) 2 OLR 317

Hon'ble Judges : R.N. Biswal, J

Bench : Single Bench

Judgement

R.N. Biswal, J.—Heard learned Counsel for the petitioners and learned Addl. Standing Counsel on the petition u/s 482 of Cr.P.C.

2. The petitioners have challenged the order dated 23.07.2007 passed by the learned S.D.J.M., Bhadrak in G.R. Case No. 1491 of 2006, wherein he took cognizance of the offence u/s 498A/302/304B/34 I.P.C. read with Section 4 of the D.P. Act so far as they are concerned. The petitioners are father and son. The deceased Kanakalata Barik married Mohan Barik, another son of petitioner No. 1 on 3.6.2005. It is alleged that she was tortured by the relatives of her husband and the husband himself for non-fulfilment of their demand of dowry, Ultimately, in furtherance of their common intention, they committed her murder. On this allegation, the F.I.R. was lodged. After investigation, charge sheet was submitted under Sections 498A/302/304B/34 of I.P.C. read with Section 4 of the D.P. Act against the petitioners, the husband of the deceased and her mother-in-law. On going through the case diary and the charge sheet the learned S.D.J.M., Bhadrak took cognizance of the aforesaid offences vide order dated 23.07.2007, which is under challenge as stated above.

3. Learned Counsel for the petitioners submits that admittedly, the deceased died within seven years of her marriage on burn injuries. As found from the case diary, the deceased stated in her statement u/s 161 Cr.P.C. that her husband and

mother-in-law tortured her in many a ways. There is no whisper against the petitioners. It is also found from the dying declaration of the deceased that on the date of occurrence, as her husband and mother-in-law scolded her, she herself poured kerosene over her, just to threaten them. In the meantime, her husband set her ablaze. So, there is no prima facie material against the petitioners that they had any role in commission of murder of the deceased. The statement of the deceased is also silent with regard to torture for non-fulfilment of demand of dowry by the present petitioners. So, the offence u/s 498A/302 of I.P.C. and Section 4 of the D.P. Act cannot be attracted against the petitioners. Even if it is presumed that the deceased committed suicide by burning herself, still then since there is no prima facie material to hold that soon before her death the deceased was tortured by the petitioners, they cannot be liable for the offence u/s 304B of I.P.C. Learned Counsel for the petitioners further submits that the husband and mother-in-law of the deceased, who faced trial before the Ad-hoc Addl. Sessions Judge, Bhadrak have been acquitted honourably.

4. Learned Addl. Standing Counsel, on the contrary, contends that one Pradip Mishra while being examined by the police stated that some time after marriage of the deceased, the petitioners and their family members demanded further dowry and when the same could not be complied with, they tortured the victim as he heard from the victim herself. When the statement of the victim is conspicuously silent in this regard, the statement of this witness will not be helpful to the prosecution.

5. Taking into consideration the facts and circumstances of the case and the argument advanced by learned Counsel for the petitioners, the CRLMC is allowed and the impugned order dated 23.07.2007, wherein the learned S.D.J.M., Bhadrak took cognizance of the offence under Sections 498A/302/304B/34 of I.P.C. read with Section 4 of the D.P. Act so far the petitioners are concerned is hereby quashed.

6. Accordingly, the CRLMC is disposed of.

7. L.C.R. be remitted back forthwith.

8. Urgent certified copy of this order be granted as per rules.