

(2004) 02 OHC CK 0017
In the Orissa High Court
Case No : CR.M.C. No. 3074 of 2002

Prasanna Kumar Moharana and Others APPELLANT
Vs
State of Orissa and Another RESPONDENT

Date of Decision : 06-02-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2004) 97 CLT 361 : (2004) 27 OCR 609 : (2004) 1 OLR 702

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : D. Nayak, D.P. Pradhan, U.R. Jena, P. Mohanty, B. Das, S. Das, P.K. Mohanty and U.R. Singh, for the Appellant; S.K. Mund, D.P. Das, J.K. Panda, S.K. Joshi, S. Panigrahi and P.K. Ray, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—This application u/s 482, Cr.P.C. has been filed challenging the order dated 18.8.2000 passed by the learned J.M.F.C., Sambalpur in G. R. Case No. 1401 of 1999 framing charge for commission of offences under Sections 498(A), 506 and 34 of the Penal Code read with Section 4 of the Dowry Prohibition act. It appears from the record that initially the G.R. Case was registered in the Court of the learned S.D.J.M., Sambalpur and subsequently the same has been transferred to the Court of the learned J.M.F.C.

2. The petitioners are accused persons in the aforesaid G.R. Case. The petitioner No. 1 is the husband of opposite party No. 2 and petitioner Nos. 2 and 3 are the parents of petitioner No. 1. The allegation of opposite party No. 2 is that she had married the petitioner No. 1 as per Hindu customs and rites and after living together for sometime there were differences and opposite party No. 1 lodged an FIR on 19.4.1998 alleging (herein that prior to marriage the petitioner No. 2 had demanded furniture, dress for the bridegroom and expenses of the Barat. Thereafter, Rs. 27,000/-had been given towards furniture, cooking gas and freeze. At the time of marriage, a colour T.V., washing machine and several other

articles were also given along with further cash of Rs. 45,00,000/-. It is further alleged in the FIR that from the beginning of the marriage, the in-laws of the opposite party No. 2 including her husband meted out mental and physical torture to opposite party No. 2 and demanded further dowry. It is also alleged that she was illfed and was occasionally assaulted by the petitioner No. 1. The specific allegation against the petitioner No. 1 is that he was coming to the house in a drunken condition and threatened to kill the opposite party No. 2. On such allegation investigation was taken up and on completion of investigation, charge sheet was submitted for commission of offences under Sections 498(A), 506 and 34 of the Penal Code read with Section 4 of the Dowry Prohibition Act.

3. The learned counsel appearing for the petitioners submitted that immediately after marriage, opposite party No. 2 was found abnormal and was not willing to lead a conjugal life. It is further submitted that she was an adamant lady and did not care for the petitioners and was using insulting words to the parents of the petitioner No. 1. It is also submitted by the learned counsel for the petitioners that the opposite party No. 2 goes away frequently to her parents at Sambalpur and never looked after them. She was making frequent telephone calls to the unknown persons and was also inviting the people to his house, in absence of petitioner Nos. 1 and 2 and on being asked, she threatened to commit suicide or lodge false report. Since it was not possible to stay with her any further, the petitioner No. 1 had filed a suit for divorce and after receipt of notice in the said divorce suit, on false and flimsy allegation an FIR was lodged by the opposite party No. 2. The learned counsel further submitted that lodging of the FIR was an after thought since the opposite party No. 2 never thought of filling an FIR before receipt of the notice in the divorce suit. The learned counsel appearing for the opposite party No. 2, on the other hand, submitted that as per FIR allegation, not only before marriage even after marriage there was demand of dowry and she was subjected to torture by the petitioner No. 1 and, therefore, there was no other option except to lodge an FIR making such allegation.

4. At the time of taking cognizance or framing of charge the Court is only required to see whether prima facie materials are available on record to support the order taking cognizance or framing charge. The defence of the accused is not required to be considered at this stage. Specifically at the time of framing of charge on the existing material available on record, if the Court presume that the offences alleged are committed, charge for those offences can be framed. There are specific allegations of demand of dowry and torture in the FIR Whether such FIR was an after thought or not can be decided during trial. The defence allegations as mentioned in the petition and submitted by the learned counsel for the petitioners cannot also be considered at this stage since prima facie materials are available on record to support the charges in respect of which charge has been framed. In view of the above, there is no scope for this Court to interfere with the impugned order.

Accordingly, I do not find any merit in the petition and the same stands

dismissed.