

(2009) 07 OHC CK 0009

In the Orissa High Court

Case No : Criminal M. C. No. 2658 of 2006

Sabita Mishra ' Chabbi and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 07-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 482
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 307, 34, 354, 498A, 506

Citation : (2009) 07 OHC CK 0009

Hon'ble Judges : Indrajit Mahanty, J

Bench : Single Bench

Advocate : R.K. Nayak, S.K. Dash, P.K. Moharaj and S.P. Dash, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Indrajit Mahanty, J.—In the present application u/s 482 Code of Criminal Procedure, prayer has been made by the Petitioner to quash the order of cognizance dated 15.7.2006 passed by the learned S.D.J.M. (Sadar), Cuttack as well as the criminal proceeding pending against the Petitioner.

2. The case of the prosecution is that one Manasi Kar, W/o. Binod Kumar Kar lodged an F.I.R. before the I.I.C., Mahila Town P.S. on 16.1.2006. In the said F.I.R., the victim-Manasi Kar stated that she had married to one Binod Kar on 27.1.2004 and at the time of marriage as per the demand of her in-laws, cash and other household articles including gold had been given to them. It is alleged that after her marriage, her in-laws took away her ornaments and demanded further dowry and due to non-fulfillment of the same, she had been subjected to cruelty and was ultimately driven out from her in-laws house and on 17.1.2005, she gave birth to a male child in her parent's residence. The fact further alleged is that though after the intervention of Cuttack Mahila P.S., the matter had been amicably settled and the victim has been residing with her husband at C.D.A.

irva rented house, her uncle-in-law had tried to outrage her modesty and had also tried to kill her by pushing a pillow on her mouth.

3. Basing on the aforesaid information, a case u/s 498-A, 506, 307, 354/34 I.P.C. read with Section 4 of D.P. Act was registered and investigation started. After completion of the investigation, a charge-sheet was submitted against the present Petitioners along with two Ors. , namely, Ashok Kumar Mishra (uncle-in-law) and Binod Kumar Kar (husband) for the alleged offences under aforesaid provisions of the I.P.C.

4. Sri R.K. Nayak, learned Counsel appearing for the Petitioner submits that upon receipt of the charge-sheet, the learned S.D.J.M. (Sadar) Cuttack, without applying his judicial mind and without appreciating the materials available on record, in a routine and casual manner, had taken cognizance for the offences as noted hereinabove, even though, it is alleged that no prima facie materials were available against the present Petitioners to constitute the offence, in which cognizance had been taken. It is submitted that amongst the present Petitioners, Petitioner Nos. 1 to 5 are distantly related to the victim/informant. While Petitioner Nos. 1 and 2 are the sister of the mother-in-law (Mausi Sashu). Petitioner No. 3 is the uncle-in-law(Mausa Swasura). Petitioner No. 4 is the aunt-in-law (Main Sashu) and Petitioner No. 5 is also Anr. Mausi Sashu. Sri Nayak submits that none of the Petitioners had any role to play in the alleged crime but intentionally and deliberately they have been roped into this case by the informant with ulterior motive by the informant to harass the entire family members.

5. It is further submitted that Petitioner Nos. 1 to 5 are distant family members to the informant and all of them stay in different places even some of them outside the State, they have been roped into this case since, the informant was bent upon the drag all relations of her in-laws into the case, even though, they have no nexus with their family or for any role to play in the alleged crime. While the Petitioner No. 1 is staying with her husband who is a Bank Manager at Bhillai, the Petitioner No. 3 is the Chairman of Cuttack Gramya Bank and Petitioner No. 2 is his wife. Petitioner No. 4 is staying in Bhubaneswar and Petitioner No. 5 is also a Government servant working in Radhakanta Bidyapitha and she stays in the place of her service and all of them have been dragged into this case unnecessarily only to be harassed.

In so far as the Petitioner No. 6 is concerned, it is submitted that she is the mother-in-law of the victim and also a Government servant serving as a HOD in the Department of Philosophy in S.B. Women College, Cuttack and is a widow. It is submitted that since her son Binod Kumar Kar was residing with his wife (informant) separately in a house located at C.D.A. area and she has been entangled in this case with false and frivolous allegations. It is further alleged that while the informant has foisted many false cases against all family members, for which the Petitioner No. 6 is not in a position to even live in her own house peacefully. It is alleged that the informant has forcefully occupied the

matrimonial house for which the Petitioner No. 6 and her son have to reside elsewhere.

Sri Nayak, learned Counsel appearing for the Petitioner placed reliance on the following judgments:

i) 2007 (8) Supreme Today 405(Onkar Nath Mishra and Ors. v. State (NCT of Delhi) and Anr. (2008) 40 OCR (SC) 365

ii) 2008 (I) OLR (SC) 827 (Renu Kumari v. Sanjay Kumar and Ors.)

(iii) Sura Naik and Others Vs. State of Orissa,

(iv) Prafulla Behera and Ors. v. State of Orissa 2003 (Supp.) OLR (NOC) 935

Learned Counsel for the Petitioner submitted that this is a fit case where the order of cognizance against the Petitioner Nos. 1 to 5 ought to be quashed since no prima facie materials against any of the aforesaid Petitioners is available on record of the investigation nor in the statement u/s 161 Code of Criminal Procedure

6. Learned Addl. Government Advocate appearing for the State, on the other hand, placed reliance on records of investigation as well as 161 statements recorded by the police and stated that since a charge-sheet has been filed against all the accused persons and prima facie case was found by the trial court for which reason cognizance has been taken of all the offences, no justifiable reason exists for entertaining the matter at the present juncture. Apart from the above, learned Addl. Government Advocate submitted that at the present stage, while the order of cognizance is the subject matter of challenge yet the Petitioners, if they are so aggrieved, are free to move an application for discharge at the time of framing of charges and, therefore, the present application may not be entertained.

7. the Hon'ble Apex Court in the case of Renu Kumar (supra) has noted a work of "caution" in which the power vested in the High Court u/s 482 Code of Criminal Procedure are to be exercised. It has been laid down that while power under, Section 482 Code of Criminal Procedure are very wide, yet, the same ought to be exercised with great caution and the High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. The Hon'ble Apex Court has further cautioned that it would not be proper for the High Court to analyze the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceed with.

8. In view of the aforesaid authoritative ruling of the Hon''bie Supreme Court, I am not inclined to entertain the present application and accordingly, the same is dismissed. However, the dismissal of the present application would not debar the Petitioners from approaching the trial court with an application of discharge at an appropriate time.