

(2007) 09 OHC CK 0016

In the Orissa High Court

Case No : Criminal Miscellaneous Jurisdiction No. 225 of 2007

Santosh Kumar Sahoo

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 27-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482

Dowry Prohibition Act, 1961 — Section 4

Penal Code, 1860 (IPC) — Section 304B, 34, 498A

Citation : (2007) 2 OLR 1090 Supp

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : Sangram Kumar Sahoo, for the Appellant; Soubhagya Ketan Nayak, A.S.C., for the Respondent

Judgement

L. Mohapatra, J.—This application u/s 482 Code of Criminal Procedure has been filed for quashing the order dated 6.2.2002 passed by the learned S.D.J.M., Nayagarh in I.C.C. No. 71 of 2000 taking cognizance of offences under Sections 498(A)/304(B)/34 of the Indian Penal Code read with Section 4 of the Dowry Prohibition Act.

2. Petitioner No. 1 is the husband, Petitioner No. 2 is the father-in-law, Petitioner No. 3 is the mother-in-law and Petitioner No. 4 is the brother-in-law of one Shantilata Sahoo who is the deceased in this case. Opposite party No. 2 is the father of the said deceased Shantilata Sahoo. On 1.7.2000 on the basis of an FIR lodged by the opposite party No. 2, Nayagarh P.S. Case No. 88 of 2000 was registered for commission of offences under Sections 498(A)/304(B)/34 of the Indian Penal Code read with Section 4 of the Dowry Prohibition Act against the Petitioners 1, 2 and 3. The said case corresponds to G.R. case No. 242 of 2000 in the file of the learned S.D.J.M., Nayagarh. Allegations in the FIR are that on 10.3.2000 the Petitioner No. 1 married the deceased and at the time of marriage cash of Rs. 10,000/- had been given towards dowry apart from other presentations. After marriage there was demand of Rs. 40,000/- from the side of

the Petitioners and the same having not been fulfilled, the deceased was subjected to torture and on 29.6.2000 after receiving information when the opposite party No. 2 reached the house of the Petitioner he found the deceased dead. On completion of investigation in the said case, charge-sheet was submitted for commission of offences under Sections 498(A)/304(B)/34 of the IPC read with Section 4 of the Dowry Prohibition Act. The Petitioners 1 to 3 faced trial before the learned Additional Sessions Judge, Fast Track Court, Nayagarh vide S.T. No. 5/62 of 2003. During pendency of the said Sessions Trial, the matter was amicably settled and in absence of any substantive evidence the Petitioners 1 to 3 were acquitted from the charges vide judgment dated 21.11.2006. During continuance of investigation in the said G.R. Case, the opposite party No. 2 had also filed a complaint case in the Court of the learned S.D.J.M., Nayagarh vide I.C.C. No. 71 of 2000 on the very same allegations and the in the said complaint petition, enquiry was conducted u/s 202 Code of Criminal Procedure and cognizance was taken by order dated 6.2.2002 for commission of offences under Sections 498(A)/304(B)/34 of the IPC read with Section 4 of the Dowry Prohibition Act. According to the Petitioners since three of the Petitioners, namely Petitioners 1, 2 and 3 had faced trial in the police case and were acquitted by the learned Additional Sessions Judge, on the very same allegations complaint case cannot proceed and accordingly prayer is made for quashing the proceeding. Learned Counsel for the State fairly submitted that the Petitioners 1 to 3 having faced trial in the Court of Session and having been acquitted, on the very same allegations they cannot be tried again in the complaint case. However, so far as Petitioner No. 4 is concerned, it was contended by the learned Counsel for the State that the said Petitioner No. 4 never faced trial in the police case and the complaint case can proceed against him.

3. There is no dispute that on the very same allegations a police case was registered and during investigation in the P.S. Case, a complaint petition was also filed by the opposite party No. 2. Only difference is that police case had been registered against the Petitioners 1, 2 and 3, whereas complaint was filed against the Petitioners 1 to 3 as well as Petitioner No. 4, Prafulla Kumar Sahoo. There is no dispute that the Petitioners 1 to 3 faced trial in the Sessions case and they were acquitted. Only Petitioner No. 4 has not faced trial since he was not an accused in the police case. Law is well settled that once accused persons faced trial and acquitted of the offences, on the very same allegations they cannot be tried again and accordingly I have no hesitation to hold that the complaint case is liable to be quashed so far as Petitioners 1 to 3 are concerned.

4. So far as Petitioner No. 4 is concerned, there is no dispute that he was not an accused in the police case and accordingly has not faced trial. Now the question is as to whether the complaint case should proceed against the said Petitioner No. 4 or not. As it appears from the judgment delivered by the Court of Session in respect of the Petitioners 1 to 3, witnesses did not support the prosecution case and on the other hand, stated that after marriage the deceased and the

Petitioner No. 1 were living happily and the deceased was being treated well by the Petitioners. It further appears that the witnesses stated that there was never demand of dowry and the deceased was not tortured mentally or physically. In view of such nature of evidence, the Trial Court acquitted the Petitioners 1 to 3. Since the witnesses turned hostile against the principal accused persons who are husband, father-in-law and mother-in-law, there is hardly any chance of these witnesses making statement against the Petitioner No. 4 who is the brother-in-law. These witnesses have stated in the trial Court that the deceased and the Petitioner No. 1 were living happily and there was never any demand of dowry or torture both physical or mental and they cannot make a different statement if the Petitioner No. 4 is put to trial, I am of the view that no fruitful purpose would be served by directing the Petitioner No. 4 to face trial in the complaint case.

5. In view of the discussions made above, I quash the proceeding in the aforesaid complaint case. The CRLMC is accordingly disposed of.

Urgent certified copy of the order be granted on proper application.