

(2018) 01 OHC CK 0018
In the Orissa High Court
Case No : 2290 of 2004

Siba Prasad Pani & another

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 02-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 147](#), [Section 147](#)

Citation : (2018) 01 OHC CK 0018

Hon'ble Judges : S.K. Sahoo

Bench : Single Bench

Advocate : Soma Patnaik, Prem Kumar Patnaik

Final Decision : Dismissed

Judgement

1. The petitioners Siba Prasad Pani and Babu Pani @ Jagomon Panda have filed this application under section 482 of the Criminal Procedure

Code for quashing the impugned order dated 10.09.2004 passed by the learned S.D.J.M., Gunupur in G.R. Case No.151 of 2004 in taking

cognizance of the offences punishable under sections 147/148/452/323/506/302/149 of the Indian Penal Code and issuance of process against

them. The said case arises out of Gunupur P.S. Case No. 68 of 2004.

2. The first information report was lodged by one Siba Prasad Choudhury before the officer in charge of Gunupur Police Station on 11.05.2004

stating therein that on that day while he and his family members were sleeping inside their house, some persons being armed with lathi, iron rod

entered inside, assaulted them and took away cash of Rs.70,000/- as well as one

gold necklace. The informant specifically mentioned the names of the two petitioners along with others in the F.I.R. as the culprits who committed the crime.

3. On the basis of such first information report, Gunupur P.S. Case No. 68 of 2004 was registered on 11.05.2004 under sections

147/148/452/323/380/506/149 of the Indian Penal Code against eleven accused persons including the present two petitioners.

4. During course of investigation, the injured persons were sent for medical examination to S.D. Hospital, Gunupur and one of such injured namely

Biswanath Choudhury succumbed to death and thereafter the case turned to one under section 302 of the Indian Penal Code. The family members

of the deceased were treated at S.D. Hospital, Gunupur and their injury reports revealed that they have also sustained some injuries. After

completion of investigation, on 11.05.2004 the Investigating Officer submitted chargesheet under sections 147/148/149/452/ 323/302/506 of the

Indian Penal Code.

5. Miss Soma Patnaik, learned counsel appearing for the petitioners contended that there is counter case to the present case which was instituted

by none else than the petitioner no.1 before the officer in charge of Gunupur police station on the same day, on the basis of which Gunupur P.S.

Case No.69 of 2004 was registered under sections 147/323/324/420/506/149 of the Indian Penal Code read with section 3(1)(x) of SC & ST

(PA) Act and ultimately chargesheet has been submitted under sections 341/323/294/406/506/34 of the Indian Penal Code against the informant

Siba Prasad Choudhury. It is contended by the learned counsel for the petitioners that there was previous dispute between the parties relating to

refund of Chit Fund money by the deceased for which the petitioners have been falsely entangled in the case. It is further contended that no final

opinion relating to the cause of death of the deceased has been obtained by the Investigating Officer and while the viscera report had been sent to

S.F.S.L. for chemical examination, without awaiting for the report, charge sheet has been submitted. It is further contended that there is no material

on record that the deceased met with a homicidal death and therefore, submission of chargesheet under section 302 of the Indian Penal Code

against the petitioners is not sustainable in the eye of law.

6. Mr. Prem Kumar Patnaik, learned Addl. Government Advocate on the other hand submitted that not only the informant but also there are other

injured eye witnesses to the occurrence and they have specifically implicated the petitioners in the crime. He further submitted that the injury

reports as well as post mortem report clearly indicate that not only the injured persons but also the deceased had sustained injuries. He further

contended that the initiation of a counter case is not a ground to quash the criminal proceeding against the petitioners and when prima facie case is

clearly made out, the impugned order should not be disturbed.

7. Adverting to the contentions raised by the learned counsels for the respective parties and after going through the first information report, the

statements of the family members of the deceased particularly the injured eye witnesses, it appears that they have specifically stated as to how the

crime was committed and also about the participation of the two petitioners in the alleged crime. The injury report of the deceased revealed that he

had sustained some injuries and even post mortem report also indicates that the deceased had sustained some injuries. The materials on record

prima facie indicate that during treatment after sustaining injuries in the hands of the accused persons, the deceased died. It is true that when the

charge sheet was submitted, the chemical analysis report had not been received but when on the basis of the eye witnesses' account, the inquest

report, the injury report, post mortem report and other materials, the Investigating Officer has come to the conclusion that a prima facie case under

section 302 of the Indian Penal Code is made out, it cannot be said that he has committed any illegality in submitting chargesheet for such offence.

Just because the doctor had not given opinion regarding the cause of death, this Court cannot immediately jump to the conclusion that it is not a

case of homicidal violence. Even if the medical opinion does not support the case of homicidal violence, if other materials are available as positive

evidence to show that the deceased died due to homicidal violence then the Court can arrive at such conclusion wherein it is safe. The opinion of

the autopsy surgeon in a post-mortem report or such opinion after obtaining the viscera report cannot be conclusive with regard to the cause of the

death. It may be a genuine bona fide opinion based on analysis of various factors but it cannot be sacrosanct, as an opinion being an opinion

cannot be the basis of criminal conviction, in the absence of any corroborating evidence.

8. So far as the counter case is concerned, on a plain reading of the counter case F.I.R. and chargesheet, it reveals that the occurrence in question

is not disputed. Whether the occurrence as presented by the petitioner no.1 in his F.I.R. which gave rise to Gunupur P.S. Case No. 69 of 2004 is

correct or the version which has been presented by the informant Siba Prasad Choudhury is correct is to be adjudicated by the learned trial Court

after taking evidence from both the sides. No doubt there are materials on record to show that there was dispute between the parties relating to

refund of Chit Fund money by the deceased but that can be a motive behind the commission of crime. Therefore, at this stage, I am not inclined to

accept the contention raised by the learned counsel for the petitioners that since a counter case has been instituted by the petitioner no.1 against the

informant, it is a ground to quash the criminal proceeding against the petitioners.

9. In view of the available materials on record, the impugned order passed by the learned Magistrate calls for no interference and I am not inclined

to invoke my inherent power under section 482 of Cr.P.C. to quash the criminal proceeding.

10. Accordingly, the CRLMC application being devoid of merits, stands dismissed.