

(2016) 09 OHC CK 0052

In the Orissa High Court

Case No : T.R.P.C.R.L. No. 89 of 2014 (An application under section 407 of Cr.P.C. in connection with C.T. Case No. 632 of 2013 pending on the file of S.D.J.M., Bhubaneswar).

**Smt. Anusuya Sitha - Petitioner @HASH State of Orissa and Others -
Opposite parties**

Date of Decision : 16-09-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 407
Penal Code, 1860 (IPC) — Section 323, Section 34, Section 406, Section 498A

Citation : (2016) 167 AIC 809 : (2016) 2 ILRCuttack 1353

Hon'ble Judges : S.K. Sahoo, J.

Bench : Single Bench

Advocate : Mr. Sidhartha Das, P.R. Singh, A.K. Mohanty and N.K. Sahoo, Advocates, for the Petitioner; for Opposite Party No. 1 - Mr. Jyoti Prakash Patra Addl. Standing Counsel; Mr. A. Jena and A.K. Nayak, Advocates, for the Opposite Party Nos. 2 to 6

Final Decision : Allowed

Judgement

S.K. Sahoo, J. - None appears on behalf of the petitioner so also on behalf of the opposite parties nos.2 to 6.

2. Heard Mr. Jyoti Prakash Patra, learned Additional Standing Counsel for the State.

3. The petitioner Smt. Anusuya Sitha has filed this application under section 407 Cr.P.C. with a prayer to transfer in C.T. Case No.632 of 2013

arising out of Bhubaneswar UPD Mahila P.S. Case No.37 of 2013 pending in the Court of learned S.D.J.M., Bhubaneswar to the Court of

learned S.D.J.M., Dhenkanal for hearing, trial and for adjudication of the case.

4. As it appears on the First Information Report submitted the petitioner before the Bhubaneswar UPD Mahila Police Station on 15.02.2013,

Bhubaneswar UPD Mahila P.S. Case No.37 of 2013 was registered under sections

498-A, 323, 406 read with section 34 of the Indian Penal

Code and section 4 of the Dowry Prohibition Act against the opposite parties nos. 2 to 6 who are the husband, father-in-law, brother-in-law,

mother-in-law and sister-in-law of the petitioner respectively.

5. During course of investigation, the Investigating Officer visited the spot, examined the witnesses, arrested some of the accused persons, seized

the relevant documents and also seized the dowry articles from the house of the accused persons, left it in the Zima of the petitioner as per the

Zimanama and finding prima facie case under sections 498-A/323/406/34 of Indian Penal Code and section 4 of the Dowry Prohibition Act,

submitted charge sheet on 30.12.2013 and accordingly, on receipt of such charge sheet, the learned S.D.J.M., Bhubaneswar being prima facie

satisfied that the ingredients of the offences are made out, vide order dated 12.02.2014 has been pleased to take cognizance of such offences.

6. It appears from the grounds taken in the application under section 482 Cr.P.C. that the petitioner is now residing in her parents' house at

Dhenkanal along with her two children and the father of the petitioner is a retired person and it is stated that due to paucity of income, it is quite an

onerous task for the petitioner to attend the case at Bhubaneswar. It is further stated that the maintenance proceeding was instituted by the

petitioner against the opposite party No. 2 before the learned Judge, Family Court, Dhenkanal in Criminal Misc. Case No. 204 of 2013 and an

order of maintenance has been passed but the opposite party no.2 has not paid anything to the petitioner and her two children. It is further stated

that the opposite party No. 2 filed a divorce petition before the Court of learned Additional District Judge, This Hazari Court at New Delhi and the

Hon"ble Supreme Court in Transfer Petition (C) No. Section 406 of 2014 has been pleased to transfer the divorce petition i.e. HMA Petition

No.552 of 2013 to the Court of District Judge, Dhenkanal, Odisha with a further direction to assign the same to the Court of competent

jurisdiction.

7. No objection has been filed to the transfer application of the petitioner by the opposite parties no.2 to 6.

8. Section 178 of the Cr.P.C. states about the place of inquiry or trial if an offence is committed.

Clause (c) of Section 178 of the Code deals with a situation where an offence is a continuing one, and continues to be committed in more local

areas than one. A "continuing offence" means that if an act or omission on the part of the accused constitutes an offence and if that act or omission

continues from day to day, then a fresh offence is committed every day on which the act or omission continues. In a case of dowry torture, if

materials collected indicate that the demand was made at the father's place of the victim at place "A" and physical torture was given at the in-laws'

house at place "B" and after the victim came back to her father's place, the mental torture continued at place "A", the offence which appears to be

one under section 498-A of I.P.C. and section 4 of D.P. Act is a continuing one and as such the victim can lodge the F.I.R. either at place "A" or

at place "B" in the concerned police station or file complaint in the concerned Court at "A" or at "B" and the Court within whose local jurisdiction

the place "A" or "B" situates can also inquire into or try the offence.

9. In case of Smt. Sujata Mukherjee v. Prashanta Kumar Mukherjee reported in A.I.R. 1997 S.C. 2465, the allegation of the appellant

was that she was maltreated and humiliated not only in the house of her in-laws at Raigarh but as a consequence of such events, the husband of the

appellant had also come to the house of her parents at Raipur and had also assaulted her. The High Court held that except the husband, the

complaint against other respondents related to the incident taking place at Raigarh and as such the criminal case on the basis of the complaint made

by the appellant was not maintainable against the other respondents at Raipur but such case was maintainable so far as husband of the appellant is

concerned. Hon'ble Supreme Court set aside the order of the High Court on the ground that the complaint reveals a "continuing offence" of

maltreatment or humiliation meted out to the appellant in the hands of all the accused-respondents and in such continuing offence, on some

occasions, all the respondents had taken part and on other occasion, one of the respondents had taken part and as such clause (c) of Section 178

of the Code is clearly attracted.

10. On going through the averments made in the First Information Report as well as charge sheet, it appears that cause of action has also arisen

within the territorial jurisdiction of S.D.J.M., Dhenkanal where the demand of

dowry was made at the time of marriage and the mental torture is also continuing with the petitioner within the jurisdiction of S.D.J.M., Dhenkanal and the petitioner is now staying at her father's place at Dhenkanal and maintenance proceeding as well as divorce proceeding are also subjudiced before the Dhenkanal Court and therefore, for the convenience of the parties, I am of the view that C.T. Case No.632 of 2013 pending in the Court of learned S.D.J.M., Bhubaneswar should be transferred to the Court of learned S.D.J.M., Dhenkanal in the interest of justice.

11. Accordingly, the transfer application filed by the petitioner is allowed. C.T. Case No.632 of 2013 which arises out of Bhubaneswar UPD

Mahila P.S. Case No.37 of 2013 charge sheeted under sections 498-A, 323, 406 read with section 34 of the Indian Penal Code and section 4 of

Dowry Prohibition Act pending before the Court of learned S.D.J.M., Bhubaneswar is directed to be transferred to the Court of learned

S.D.J.M., Dhenkanal for trial.

12. A copy of the order be sent immediately to Court of learned S.D.J.M., Bhubaneswar who on receipt of the same shall transfer the case

records of C.T. Case No. 632 of 2013 to the Court of learned S.D.J.M., Dhenkanal for trial. A copy of the order be also sent to the learned

S.D.J.M., Dhenkanal for intimation and to do the needful.

13. In the result, the TRPCRL application filed by the petitioner is allowed.