
(2007) 10 OHC CK 0011
In the Orissa High Court

Smt. Mounabati Jena and Another

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 05-10-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 201, 304B, 34, 498A

Citation : (2007) CLT 844 Supp : (2008) 1 DMC 352 : (2007) 2 OLR 694 :
(2007) OLR 844 Supp

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Judgement

L. Mohapatra, J.—In this application u/s 482 Cr.P.C, the order dated 18.2.2006 passed by the learned S.D.J.M., Dhenkanal in G.R.Case No. 331 of 2005 taking cognizance of the offences under Sections 498A, 304B, 201 and 34 of the Indian Penal Code read with Section 4 of the Dowry Prohibition Act is under challenge.

2. The informant Shantilata Rout, who is the mother of the deceased, lodged an F.I.R. before the Officer-in-Charge, Sadar Police Station, Dhenkanal alleging therein that on 17.4.2002 she had given her daughter in marriage to one Bulu @ Satyanarayan Jena. At the time of marriage, Rs. 70,000/- was given towards dowry. However, after marriage, her daughter was tortured by the petitioners for non-fulfilment of further dowry demand. It is further alleged in the F.I.R. that due to such torture, the deceased was living a measurable life. On 20th February, 2005, the informant and other family members were informed regarding illness of the deceased and when they went to see her, they found that the deceased had died and her dead body had already been cremated. Suspecting that the accused persons might have killed the deceased, the F.I.R. was lodged. The police after investigation submitted charge sheet for commission of offences for which cognizance has been taken.

3. According to the learned Counsel for the petitioners, there is no material to

submit the charge sheet for commission of offence u/s 304B of the Indian Penal Code since the deceased died out of Ovarian Cancer. The death not being unnatural, the offence u/s 304B is not at all made out. In view of such submission made by the learned Counsel for the petitioners, the learned Counsel for the State was directed to produce the case diary. The case diary contains a number of documents, which show that the deceased was suffering from cancer and was under treatment. On perusal of the statements of witnesses recorded in course of investigation also, I find that nobody has alleged that the deceased was either killed or committed suicide. Since the dead body was cremated before information to the police, it is not possible to find out what was the cause of death. Under these circumstances, I am of the view that considering the statements made by the witnesses examined during investigation and specifically in absence of any allegation to the effect that the deceased was either killed or committed suicide, the order taking cognizance so far as offence u/s 304B of the Indian Penal Code is concerned, is required to be reconsidered.

4. I, accordingly quash the impugned order and direct the learned Magistrate to reconsider the question as to whether on the existing materials cognizance in respect of the offence u/s 304B of the Indian Penal Code should be taken or not. So far as other offences are concerned, there being materials on record prima facie to establish commission of the said offences, they do not require to be reconsidered.

5. With the above observation and direction, the CRLMC is disposed of.

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