

(2005) 05 OHC CK 0052
In the Orissa High Court
Case No : CRLMC No. 2039 of 2004

Sura Naik and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 11-05-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 161, 294, 323, 34, 482

Citation : (2006) CLT 484 (Suppl CrI) : (2006) 1 OLR 678 : (2006) OLR 484 (Suppl CrI)

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Advocate : Lalitendu Mishra, for the Appellant; Addl. Standing Counsel, for the Respondent

Judgement

A.K. Parichha, J.—Although the matter has been listed for admission, on the consent of the learned Counsel for the parties, it is taken up for final disposal.

2. Heard the learned Counsel for the parties.

3. One Manju Naik filed a complaint petition bearing ICC No.63 of 2003 in the Court of learned JMFC, Narasinghpur against the petitioners. The said complaint petition was forwarded to Kanpur Police Station u/s 156(3), Cr.P.C. for investigation. The authorities of Kanpur P.S. registered the complaint case as Kanpur P.S. Case No.39 of 2002, corresponding to G.R. Case No. 111 of 2003 and investigation was undertaken. On completion of investigation, charge-sheet was submitted against the petitioners for the offence under Sections 498-A, 323, 294, 506/34, IPC and Section 4 of the D.P. Act. Learned JMFC, Narasinghpur after perusing the charge-sheet and case diary, took cognizance for the above noted offences in the aforesaid G.R. Case No. 111 of 2003 and directed issue of process against the petitioners. Aggrieved by the said order, petitioners have filed the present application u/s 482, Cr.P.C. to quash the proceedings of the said

G.R. Case.

4. Mr. L. Mishra, learned Counsel for the petitioners submits that the statement of the complainant and the witnesses examined by the I.O. do not contain any material to constitute the ingredients of the offences alleged or the involvement of the petitioners with those offences and for that reason, the order of cognizance and the proceeding of G.R. Case No.111 of 2003 of the Court of learned JMFC, Narasinghpur be quashed.

5. Learned Addl. Standing Counsel placing reliance on the statements of the complainant and the witnesses available in the case diary submits that a clear prima facie case is available against the petitioners for the aforesaid offences and so, the proceedings of the said G.R. Case No.111 of 2003 cannot be quashed.

6. In view of the rival contentions of the parties, the only aspect, which needs consideration, is whether the materials produced by the prosecution reveal a prima facie case for any of the alleged offences and if the petitioners have been linked in any way with those offences. The complainant, Manju Naik in her statement u/s 161, Cr.P.C. has clearly mentioned that her father-in-law and mother-in-law (petitioner Nos. 2 and 3) were living separately from her and her husband and they never demanded any dowry or never inflicted any kind of torture for dowry. In her statement, she has also not alleged that petitioner Nos. 4 to 8 made any dowry demand or meted out any ill-treatment towards her. There is also no indication in her statement that the petitioner Nos. 2 to 8 ever abused, assaulted or threatened or harassed her. The other witnesses, namely, Karunakar Naik, Bhamara Naik, Pradip Naik, Uttam Naik and Abhaya Naik also did not whisper a single word against petitioner No. 2 to 8 in their statements before the I.O. So, from the materials produced by the prosecution, no prima facie case for any of the offences is established against petitioner Nos. 2 to 8. However, the statement of the complainant and the witnesses, gives sufficient indication that petitioner No.1 was ill-treating the complainant and was inflicting physical and mental torture. It is also apparent from the statements of the witnesses that the petitioner developed intimacy with a widow and kept her in his home. Whether those allegations are true or false will be decided at the stage of trial. But such materials, which are available in the case diary certainly reveal a prima facie case for the alleged offences against petitioner No.1.

7. In view of the above noted facts and circumstances, I feel that continuance of the proceeding in respect of petitioner Nos. 2 to 8 will be unjust and abuse of the process of the Court. Accordingly, the proceedings in G.R. Case No.111 of 2003 pending in the Court of learned JMFC, Narasinghpur in respect of petitioner Nos. 2 to 8 stands quashed. The proceeding of the said G.R. Case will however continue in respect of petitioner No.1 as prima facie case for the alleged offences is available against him.

8. With the aforesaid observation and direction, the CRLMC is disposed of.

9. UCC be granted if applied for on proper application.