

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 52 of 2011

An application under Sections 401 and 397 read with Section 482 of the Code of Criminal Procedure, 1973.

AFR

**Bulu @ Bishnu Prasad Prusty @
Bisnu Prasad Prusty**

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Petitioner

-Versus-

State of Odisha

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Opp. Party

Advocate(s) appeared in this case:-

For Petitioner : M/s. P.K. Mishra & S.K. Das,
Advocates

For Opp. Party : Mr. S.K. Mishra,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

4th August, 2022

SASHIKANTA MISHRA, J.

The petitioner is an accused in C.T. (SS) No 130 of 2010 of the Court of learned Additional Sessions Judge-cum- F.T.C., Dhenkanal. In the present

revision, he seeks to challenge the order dated 12.01.2011 passed by learned court below in rejecting his application filed under Section 227 of Cr.P.C. for his discharge from the case.

2. The prosecution case, briefly stated, is that basing on an FIR lodged by one Rohita Samal and his wife Binapani on 16.05.2010, Motonga P.S. Case No. 88 of 2010 was registered under Sections 498-A/304-B/302 of IPC read with Section 4 of DP Act corresponding to G.R. Case No. 505 of 2010 of learned S.D.J.M., Dhenkanal, which has since been committed to the Court of Sessions.

3. It is alleged that the petitioner being the husband of one Rubi committed her murder by administering poison and that prior to the occurrence he along with his other family members had subjected the deceased to physical and mental cruelty in connection with demand for dowry. After commitment of the case to the court of Sessions, the accused-petitioner filed an application under Section 227 of Cr.P.C. to discharge him

from the offences under Sections 302/304-B of IPC, according to him, as a prima facie case is not made out.

4. Learned court below considered the said petition and held that prima facie materials are available on record to show that the deceased died otherwise than in normal circumstances within seven years of her marriage as also of the deceased being harassed and ill-treated by the accused for dowry. Therefore, all the materials taken together prima facie makes out a case under Section 304-B IPC and accordingly rejected the petition for discharge and framed charge under Section 498-A and 304-B of IPC.

5. Heard Mr. P.K. Mishra, learned counsel for the petitioner and Mr. S.K. Mishra, learned Addl. Standing Counsel for the State.

6. It is forcefully argued by Mr. P.K. Mishra that not only that the materials on record do not prima facie make out a case under Section 304-B IPC but also it is a case where there is clear evidence to show that the deceased was murdered by someone than her husband.

Referring to the statement of witnesses, Kiran Samantray (cousin sister of the deceased), Madan Mohan Sahu, Jambeswar Rout and Sudhira Nayak (independent witnesses) Mr. Mishra forcefully contends that according to their versions the deceased had died by consuming poison but the postmortem report mentions the cause of death as manual strangulation. It is therefore, evident that a false case has been foisted against the petitioner.

7. Mr. S.K. Mishra, learned Addl. Standing Counsel has argued that if the statements of all the witnesses examined by the I.O. are taken together along with the post mortem report, it would be more than evident that the deceased was subjected to cruelty soon before her death and that no one other than her husband had killed her. Referring to the so called discrepancies in the statement of witnesses pointed out by learned counsel for the petitioner, Mr. Mishra submits that these are at best minor contradictions which can only be considered at the time of trial.

8. Before considering the merits of the rival contentions put forth before this court it is apt to keep in mind that at the stage of framing charge/discharge, the court is not required to make a roving enquiry and to sift the evidence/materials on record to see whether the same are adequate to record an order of conviction. At this stage it would suffice if there are materials before the court to form a presumptive opinion as regards commission of the alleged offence by the accused.

It is well settled that the standard of test and judgment which is to be finally applied before recording a finding regarding guilt or otherwise of the accused is not to be applied at the stage of deciding the matter under Section 227 of Cr.P.C.. The Court, therefore, need not undertake an elaborate enquiry in sifting and weighing the materials nor is it necessary to delve deep into the various aspects. All that the Court is to consider is whether the evidentiary material on record, if generally accepted, would reasonably connect the accused with the crime. Reference in this regard may be had to the decision

of the apex court in the case of **Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia**, reported in (1989) 1 SCC 715 as also the case of **Union of India v. Prafulla Kumar Samal**, reported in (1979) 3 SCC 4.

9. Viewed in light of the settled position of law as referred above, it is seen that learned court below has considered the materials on record and in particular, the statement of Kiran Samantray. Even this Court after independently scanning the statement of all the witnesses examined by the I.O. finds that there are enough materials to show that the deceased was subjected to physical and mental cruelty on numerous occasions prior to the occurrence for dowry and on the night before the occurrence, the accused had severely assaulted her, for which she had taken shelter in the house of Kiran Samantray. The postmortem report clearly mentions the cause of death as homicidal in nature which could be due to manual strangulation. Certain discrepancies and inconsistencies have no doubt been pointed out but then, the same are such as can only be appreciated on the basis

of the evidence adduced during trial but not at the stage of framing charge or discharge of the accused. This Court therefore, finds no illegality or infirmity being committed by learned court below so as to interfere with the impugned order.

10. In the result, the criminal revision being devoid of merit is dismissed.

11. This being a case of the year 2010, learned court below is directed to expedite the trial and to conclude the same as early as possible, preferably within a period of six months.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 4th August, 2022/ A.K. Rana