

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLREV No. 676 of 2011

An application under Section 401 read with Section 397 of the Code of Criminal Procedure challenging order dated 03.08.2011 passed by the learned S.D.J.M., Koraput in G.R. Case No. 498/2009.

1. Bhimasen Jena
2. Kanaka @ Bishnupriya Jena
3. Nini @ Sumitra Kumari Jena
4. Kuni @ Sunita Kumari Jena
5. Mami @ Sanghamitra Jena
6. Mitu @ Sanjib Kumar Jena
7. Tutu @ Sunil Kumar Jena **Petitioners**

-versus-

State of Orissa **Opp. Party**

Advocates appeared in this case through Hybrid Mode :

For Petitioners : Mr. S.D. Das, Sr. Advocate
along with Mr. Haripad Mohanty,
Advocate

For Opp. Party : Mr. P.C. Das, ASC and
Mr D. Nayak AGA for the State
Mr. Sidheswar Mohanty,
Advocate (For the Informant)

CORAM:

JUSTICE SAVITRI RATHO

.....
Date of Judgment : 22.07.2022
.....

Savitri Ratho, J. The petitioners namely, Bhimasen Jena, Kanaka @
Bishnupriya Jena, Nini @ Sumitra Kumari Jena, Kuni @ Sunita
Kumari Jena, Mami @ Sanghamitra Jena, Mitu @ Sanjib Kumar

Jena and Tutu @ Sunil Kumar Jena have filed this Criminal Revision challenging the impugned order dated 03.08.2011 passed by the learned S.D.J.M., Koraput passed in G.R. Case No.498 of 2009, taking cognizance of offences under Sections 498(A)/304(B)/306/406/34 of the Indian Penal Code (in short “the IPC”) read with Section 4 of the Dowry Prohibition Act (in short “the DP Act”).

2. The case of the prosecution in brief is that the marriage of the petitioner and Petitioner No. 5 had been solemnized on 04.07.2007. There was demand of dowry of Rs 6 lakhs. At the time of marriage, apart from household articles, jewellery, cash of Rs.3,50,000/- had been paid. Rs.50,000/- had been paid towards cost of a motorcycle. For the balance amount of dowry, the deceased was regularly tortured. She had narrated about the demand and ill treatment whenever she went to her parents house, before her parents, other family members and friends. When the torture became unbearable, she committed suicide inside her bedroom by hanging herself from the ceiling fan. An UD case had been initially registered. FIR was lodged by the deceased’s father - Surendra Nath Patra, S/o late Arakhita Patra, after he received phone call from his son-in-law Sunil Kumar Jena that his daughter Reena (Bimala) has died. When asked about the cause of death, his son-in-law replied

that his father, mother and sisters have hanged the body of the Reena and to come immediately.

3. On the basis of the F.I.R. dated 17.10.2009, Koraput Town P.S. Case No. 98 of 2009 was registered for commission of offences punishable under Sections 498 (A)/304 (B)/302/34 IPC read with Section 4 of D.P. Act against Bhimasen Jena – father-in-law, Kanaka Jena – mother-in-law, and Nini, Mami and Kuni (the three sisters-in-law).

4. On the complaint of the informant before the Odisha Human Rights Commission (in short “the OHRC”) regarding biased and improper investigation and its order dated 27.05.2010 in Case No.1543 of 2009 and consequent CID, CB Office Order No.93/CID dated 18.06.2010, investigation was taken up by the CID, CB, Orissa and CID, CB Orissa, Cuttack P.S case No.12 of 2010 dated 18.06.2010 was registered. Witnesses were examined afresh by the DSP, CID and after completion of investigation, chargesheet No.65 dated 20.07.2011 was submitted against all the petitioners for commission of the offences under Sections 498(A) / 304(B)/ 306 /406 /34 IPC read with Section 4 of D.P. Act.

5. Petitioner No.1 - Bhimasen Jena is the father-in-law of the deceased, Petitioner No.2- Kanaka @ Bishnupriya Jena is the mother-in-law, Petitioner No.3- Nini @ Sumitra Kumari Jena,

Petitioner No. 4- Kuni @ Sunita Kumari Jena and Petitioner No. 5 Mami @ Sanghamitra Jena are the sisters-in-law (nanandas) of the deceased, Petitioner No. 6 Mitu @ Sanjib Kumar Jena is the brother-in-law (diara) and Petitioner No. 7 Tutu @ Sunil Kumar Jena is the husband of the deceased.

6. On perusal of case record i.e. C.D. No. XVIII to 54, statement under Section 161 of Cr.P.C. of witnesses, property seizure memo, crime detail form, spot map, spot visit report, examination report of S.F.S.L., Rasulgarh and other relevant documents are received from C.I.D., C.B., Orissa, Cuttack, the learned SDJM Koraput found existence of prima facie materials against the petitioners for commission of offence under Sections 498-A/304-B/306/406/34 IPC and Section-4 of the D.P. Act and took cognizance of the aforesaid offences against all seven accused persons by order dated 03.08.2011.

7. Learned counsel for the petitioners submits that even assuming all the allegations on record to be true, no offence whatsoever is made out for proceeding against the Petitioner No. 7- Tutu @ Sunil Kumar Jena, the husband of the deceased. Referring to the F.I.R., he submits that the same has been filed by Surendra Nath Patra, father of the deceased, who has not made any specific allegations against him and he was the one who informed the

informant over telephone about the commission of suicide by the deceased. He further submits that the witnesses examined immediately after the occurrence have also not stated anything incriminatory against the husband of the deceased – Tutu @ Sunil Kumar Jena. As regards the other accused persons, his submission is that there are no materials on record to take cognizance of the offences under Section-304 (B) and Section-306 IPC against them.

8. As the learned S.D.J.M., Koraput basing on the decision of the Supreme Court in *Asian Resurfacing of Road Agency Private Limited and Another vrs. Central Bureau of Investigation*, reported in *(2018) 16 SCC 299*, had issued notice to the petitioners for proceeding further with the case, I.A. No 415 of 2021 had been filed by the petitioners for stay of further proceedings in G.R. Case No 498 of 2009 annexing a copy of the order dated 11.08.2021 and the entire chargesheet alongwith statements of witnesses.

Perusal of the ordersheet reveals that interim order staying further proceedings had been passed in this case on 14.09.2011 and had been extended on a few occasions thereafter and was last extended on 28.02.2012 till the next date but although the matter has been listed thereafter on at least four occasions, the interim order has not been extended. So the learned S.D.J.M. could have proceeded with the matter.

9. Mr. P.C. Das, learned Additional Standing Counsel has submitted that at the stage of cognizance, the Court is not expected to conduct a mini trial and scan the materials on record and arrive at a conclusion that they will result in a conviction .There are sufficient materials are available in the case diary to proceed against all the petitioners including the husband. Statements of the family members of the deceased including her close friends make out a prima facie case under Sections 498-A, 304-B, 306, 406, 34 of IPC and Section 4 of D.P. Act against the petitioners. He fairly submits that in most of the statements initially recorded by the Sub - Inspector of Police of Koraput Town Police Station, specific allegations of torture were not available against the petitioner - Sunil Kumar Jena, but after allegation of improper investigation by the informant, the investigation was transferred to the Crime Branch and witnesses have been re-examined and their statements contain allegations against all the petitioners which are sufficient make out a case to take cognizance of the offences under Sections 498(A)/304(B)/306 /406/34 IPC against them for which the impugned order needs no interference . He has submitted that the learned S.D.J.M. has referred to the materials on the basis of which he has taken cognizance of the offences. He was not required to judge the intrinsic value of such statements at that stage, nor can such evaluation be done by the High

Court in this application. The evidentiary value of such statements and other materials produced by the prosecution can only be considered by the learned trial Court at the time of trial.

10. Mr. S. Mohanty appearing for the informant has vociferously submitted that the deceased died on account of the torture she was made to suffer on account of non-payment of the balance amount of dowry and many witnesses have stated about such demand and torture by all the petitioners. As the local police tried to shield and Petitioner No.7, who is an Advocate, the informant was compelled to approach the OHRC and pursuant to its order after the investigation was transferred to the Crime Branch, investigation was done in a proper manner. At the stage of cognizance, neither the SDJM nor this Court can evaluate the materials in the case diary by conducting mini trial but the trial had been stalled on account of the interim order passed initially in this Criminal Revision. He has also submitted that TRP (CRL) No. 41 of 2011 filed by the informant, which has been tagged with this application, may be delinked from this case and heard separately on merits .

11. Learned counsel for the informant and Sri P.C Dash have placed the statements of witnesses, the parents of the deceased-

Surendra Kumar Patra and Sakuntala Patra, her brother Sukanta Kumar Patran, her best friend Minakshi Patra, Meera Patra mother of Minakshi , Mahalakshmi Das, Sanjeeb Kumar Patra, Sibaram Patra, Krushna Chandra Das, Purna Chandra Dalei and others recorded by the DSP, Crime Branch.

12. I have heard the submissions of the learned counsels for the petitioners, perused the case diary including the statements of witnesses referred to above. I have also gone through the written note of submission filed by the learned counsel for the informant.

13. It is trite law that at the stage of taking cognizance, the Court is not required to hold a mini trial and consider the evidentiary value of the materials available against the accused persons.

In the case **State of Haryana and Ors. vs. Ch. Bhajan Lal & Ors.** reported in **1992 Supl. (1) SCC 335 17**, the Supreme Court has held :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration

wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. (5) Where the allegations made in the FIR or complaint are so absurd and inherently

improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”

14. It is true that most of the witnesses examined during investigation by the local police have not made specific allegations against the husband of the deceased - Petitioner No. 7 Tutu @ Sunil Kumar Jena. But after the informant complained against the biased and interested investigation by the local police, the investigation had been handed over to the Crime Branch and most of the of the witnesses were re-examined by the DSP Crime Branch who submitted chargesheet against all the petitioners for commission of offences punishable under Sections - 498 (A) / 304 (B) / 306 / 406 / 34 IPC and Section 4 of the D.P. Act. Adjudging the evidentiary

value of the materials produced by the prosecution in the chargesheet is the job of the trial court and are not to be evaluated at the time of cognizance by the learned Magistrate or by the High Court in an application under Section – 397 read with Section 401 of the Cr.P.C. At the stage of cognizance, it is only to be seen if the materials collected during investigation and submitted with the charge sheet make out a prima facie case against the accused persons . After a perusal of the statements of the witnesses, I am satisfied that the allegations against them make out a prima facie for taking cognizance of the offences under Section - 498 (A)/304 (B) /306 /406/34 IPC and Section 4 of the D.P. Act against all the petitioners. Hence the impugned order does not call for any interference.

15. Although this is an application under Section 397 read with Section 401 of the Cr.P.C, but keeping in mind the guidelines of the Supreme Court in the case of **Ch. Bhajan Lal** (supra) and after considering submissions of the counsels and the materials in the case diary, I am of the opinion that no case is made out for interfering in the impugned order of cognizance.

The petitioners are at liberty to raise all their pleas and contentions during trial.

16. In case the case is still pending before the learned S.D.J.M., Koraput, he is directed to take immediate steps for commitment of the case, so that trial can be completed without further delay.

17. The Criminal Revision is dismissed.

18. TRP (CRL) No.41 of 2011, which has been tagged to the Criminal Revision file be delinked and listed before the assigned Bench.

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

Copy of this order be communicated to the learned S.D.J.M., Koraput and the learned Sessions Judge, Koraput, at Jeypore by the Registry for compliance.

.....
(Savitri Ratho)
Judge

Orissa High Court, Cuttack
Dated 22nd July 2022 / puspa