

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3457 of 2013

Amar Dhal and another

....

Petitioners

Mr. B.K. Parida-2, Advocate

-versus-

State of Odisha

....

Opp. Party

Mrs. S. Patnik, AGA

CORAM:

JUSTICE CHITTARANJAN DASH

DATE OF JUDGMENT : 09.11.2022

Chittaranjan Dash, J

1. Heard learned counsels for the parties.
2. By means of this application, the Petitioners seek to quash the order dated 9th May, 2015 passed by the learned J.M.F.C., Badamba in G.R. Case No.2 of 2013 wherein the learned court took cognizance of offence U/s 498-A/304-B/302/294/506/34 IPC read with Section 4 of the D.P. Act.
3. The background fact of the case is that the deceased Sasmita Dhal (Lili) D/o. Basudeb Mallik and Santilata Mallik of village Lehanga got married to Prasanta @ Sini Dhal of village Ratapat on 21st November, 2011. It is alleged that at the time of marriage as per the demand of the bridegroom side different articles were given to the couple but after the marriage the husband Prasanta Dhal, father-in-law Arjun Dhal, mother-in-law Santilata Dhal, brother-in-law Amar Dhal and sister-in-law subjected her to torture physically and mentally demanding more dowry.

The deceased was not even provided food, water and clothes and was insisted to bring money which the deceased used to convey her parents. In the meanwhile, the deceased gave a birth to a male child who unfortunately died four months prior to the death of the deceased. The death of the child got another ground of torture for the in-laws to the deceased. It is further alleged that on 9th January, 2013 in the morning the mother of the deceased received information about the death of her daughter. Being informed, they rushed to the house of the in-laws of their daughter and found them shifting the dead body horridly for cremation. On being protested by the mother of the deceased and others from the side of the deceased, the in laws of the deceased abused and confessed that they have conjointly murdered the deceased by affixing a pillow on her face and assured to return the dowry articles with cash amounting to Rs.5,00,000/- with a request not to inform the Police. However, on the report being lodged by the mother of the deceased, the law was set in motion and investigation commenced. Upon completion of the investigation, charge sheet was submitted against the husband, parents in law besides the present Petitioners being brother and sister in law.

4. Subsequent to the submission of charge sheet upon commitment, the trial commenced by splitting up the case against the present Petitioners and the trial was faced by the husband Prasanta @ Sini Dhal and the father in law Arjun Dhal. The learned court upon completion of the trial found no material against the accused persons in the said trial in S.T. Case No.281 of 2013 and having found not guilty acquitted them from all the charges under Section 235(1) Cr.P.C.

5. Learned counsel for the Petitioners submitted that since the principal accused persons such as the husband and father in law having acquitted in the trial and there being no iota of evidence against any of the accused persons, there is no point in proceeding with the present Petitioners as chance of conviction is bleak. More particularly the evidence led in the case did not attribute the cause of death of the deceased on the in laws.

6. Learned counsel for the State on the other hand while admitting that the trial in respect to the husband and father in law has since ended in acquittal and pointed out that the trial court failed to appreciate the nature of death of the deceased opined to be homicidal strangulation.

7. Having regard to the point raised by the learned AGA, this Court wanted if the Government preferred appeal on the judgment passed by the trial court in C.T. Case No.281 of 2013, no specific affidavit was submitted except an oral submission in negative. Consequently, the said point cannot be looked into at this stage.

8. Be that as it may, the very submission of the learned counsel for the Petitioners to the effect that the trial of the case in respect to the self same charges against the husband and the father in law having ended in acquittal, it is profitable to reproduce the relevant portion of the judgment of the trial court as under :

“The next point emerged as to find out the complicity of accused persons with the death of deceased. The informant Santilata Mallick mother and P.W. 7 (Basudev Mallick) father of deceased turned hostile to the prosecution. P.W. 6 informatn (Santilata Mallick) except proving the written report Ext-7 does not allege anything as complained in the

FIR. She stated that at the time of marriage they had gifted different articles to the accused persons. The accused persons did not commit murder of her daughter for non fulfillment of additional dowry. In cross examination on behalf of defence she deposed that after marriage her daughter Lily was happily residing in her matrimonial house. Four months prior to the death of Lily she had given birth a still born son for which she was mentally disturbed. After death of Lily Prasanta informed about the death and she intimated the police whereby on the instruction of police Babu he gave her signatures on some blank papers. She does not know the content of said paper. P.W. 9 (Basudeb Mallik the father of the deceased has stated that he does not know how and why Lily died. The accused persons have not demanded any dowry or tortured Lily. He admitted to have taken zima of the seized articles vide Ext.5. In cross examination on behalf of defence he deposed that all the articles were given at the time of marriage for the maintenance of his deceased daughter. Her daughter from the date of her marriage till her death was living happily with the accused persons. She lost her mental equilibrium after death of her 1st issue and she was also suffering from acute colic pain. He does not know the contents of inquest report. P.W. 1 (Bijay Kumar Dalabehera), Sarpanch of Ratapat is a witness to inquest (Ext.1), seizure of dowry articles Ext.2, seizure of photographs vide Ext.4 and P.W.2, 3, 4, 5, 8, 9, 10 and 11 who are most material witnesses have not supported the prosecution case. They stated that deceased committed suicide on 09.01.13 in the house of accused persons. They have also stated that the accused persons have never demanded any articles, cash or anything from the deceased side and had never tortured her for dowry.

8. This being the total sum and substance of the prosecution case, even if the deceased met a homicidal death or under suspicious circumstances but there being no trust worthy evidence in support of

allegation that the accused persons had ever subjected the deceased with cruelty for non fulfillment of dowry or any dowry was demanded from the bride groom side in connection with the marriage of the deceased with Prasanta, I hold that the prosecution failed to establish the charges beyond reasonable doubt.”

9. Considering the nature of evidence adduced in the trial in S.T. Case No. 281 of 2013, the allegations appearing against the present Petitioners being omnibus in nature in the F.I.R. and the statements of the witnesses as reveals from the judgment passed by the learned trial court and relying upon the decisions of this Court in the case of ***Surendra Kumar @ Surendra Routray and another v. State of Orissa reported in 2011 (1) OLR 1052, Aditya Kumar Rath v. State of Orissa (2008) 41 OCR 233*** and the judgment of the Apex Court in ***Central Bureau of Investigation v. Akhilesh Singh*** in support of the contentions of the Petitioners, the continuation of the criminal proceeding against the present Petitioners as co-accused would amount to an abuse of the process of law, more fully when there is least possibility of conviction.

10. Considering, therefore, the judgments relied upon, the facts and circumstances and the fate of the case in S.T. Case No.281 of 2013, this Court is of the considered view that the continuation of the criminal proceeding against the present Petitioners would be an abuse of process of law since there is bleak possibility of conviction and no useful purpose would be served and as such the ends of justice would be met if the proceeding in respect to the Petitioners for trial is quashed.

11. Accordingly, the proceeding in G.R. Case No.2 of 2013 arising out of Baramba P.S. Case No.2 of 2013 pending in the court of learned J.M.F.C., Baramba is hereby directed to be quashed.

12. The CRLMC is accordingly disposed of.

(Chittaranjan Dash)
Judge

KC Bisoi /Secretary

