

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2420 of 2017

***Dr. Girish Vijay Tasgaonkar and* *Petitioners*
another.**

*M/s. Bijaya Kumar Ragada, L.N. Patra, M.P. Kariya,
R.S. Charhan, L.N. Patra, M. Sakariya,
R.S. Charhan, Advocates*

-versus-

State of Odisha & another. ***Opposite Parties***
*Addl. Standing Counsel – For O.P. No.1-State
M/s. D.K. Mohapatra, A.K. Parida,
A.K. Sahoo, Advocate – For O.P. No.2*

**CORAM:
JUSTICE S. PUJAHARI**

ORDER
17.08.2022

Order
No.

11. **1.** This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) seeking for quashing of the order dated 15.12.2016 passed by the learned S.D.J.M., Jharsuguda in I.C.C. No.56 of 2012 taking cognizance of the offences under Sections 306, 304-B and 498-A of IPC, qua the petitioners and the order issuing process against them.

2. Heard the learned counsel for the petitioners and the learned counsel appearing for the State-Opposite party no.1.

3. As per the complaint filed by the opposite party no.2 before the Court below, the marriage of his daughter – Jagyasini (Sujata) had been solemnized with Murari Pasayat (accused no.1) on 01.12.2010, and the couple stayed at Belpahar (Odisha) in the house of Murari till 18.06.2011, and then on 19.06.2011 Murari took Jagyasini, hereinafter referred to as the “deceased”, to his working place at Padampura, Awarangabad. It is alleged that both at Belpahar and Padampura, the deceased was being subjected to dowry demand, torture and life threat which had been communicated by the deceased to the complainant over phone on several occasions. It is further alleged that on 29.06.2011 the complainant had received a phone call from the deceased that she was apprehending danger to her life as the accused no.1 threatened to kill her, and that on the next date,

the complainant got death news of the deceased from the accused no.1. It is further averred vide the complaint that on 02.07.2011 on being informed that the dead body of the deceased had reached Belpahar for cremation, the complainant went there, and although it was conveyed to him that the deceased committed suicide by hanging, but he noticed many injuries on her person. As further stated, the complainant being accompanied by his brother proceeded to Awarangabad to find out the truth behind the death of the deceased, and approached the Kranti Chowk Police Station where a case had been registered regarding the death of the deceased. The petitioner no.2 (accused no.2) who had conducted the investigation / enquiry told him that the case registered as A.D. Case No.38 of 2011 had been closed and provided him a copy of enquiry report as well as a copy of the postmortem report prepared by the petitioner no.1 (accused no.3). The complainant alleges that he sensed doubt on going through the postmortem report, inasmuch as the same did not

reveal existence of any external injury on the dead body, and he also gathered information from the neighbours of the accused no.1 that the deceased was subjected to cruelty and murdered by the accused no.1. The complainant also claims to have been confirmed that the evidence of homicidal death of the deceased has been destroyed by the police officer and the Medical Officer, arraigned as accused nos.2 and 3 (present petitioners).

4. As it appears, upon the complaint being filed, the learned SDJM, Jharsuguda recorded the initial statement of the complainant under Section 200 of Cr.P.C. followed by an enquiry under Section 202 Cr.P.C. and took cognizance of offences under Sections 498-A/302/201 of IPC. As it further appears, pursuant to the order dated 21.11.2016 passed by this Court in CRLMC No.2213 of 2012, the learned SDJM modified the aforesaid order by taking cognizance of the offences under Sections 498-A/306/304-B of IPC as per the order dated

15.12.2016, and vide the subsequent orders directed for issue of process to the petitioners for appearance / production. Hence, the present application for quashing of the said orders.

5. The learned counsel for the petitioners submitted, inter-alia, that even if the whole case as presented by the complainant is assumed to be true, then also the offences under Sections 498-A/306/304-B of IPC are not made out against the petitioners, inasmuch as they are in no way related to the accused no.1, husband of the deceased, and that they only discharged their official duty in the aftermath of the death of the deceased. It is his further submission that the mere allegation that the petitioners destroyed evidence does not make out any case of criminality against them, especially when there is absolutely no material on record to show or suggest that they had any axe to grind against the deceased or the complainant, or any affinity towards the accused no.1. The learned counsel would further

contend that as per the own version of the complainant, the relevant documents, such as, enquiry report, postmortem report etc. were made available to him at the instance of the petitioner no.2 when he approached the Police Station. It is the ultimate submission of the learned counsel that there being complete non-application of judicial mind by the learned Court below in issuing process against the petitioners for the offences indicated above, the impugned orders are liable to be quashed qua the petitioners.

6. It is, however, the submission of the learned counsel for the State that this Court should not interfere with the proceeding at its threshold, and that the petitioners may raise their points before the trial Court at the appropriate stage of the proceeding.

7. One of the rules laid down by the Apex Court in the case of **State of Haryana vrs. Bhajan Lal**, reported in 1992 Supp.(1) SCC 335 that where the

allegations made in the FIR 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, the criminal proceeding against him becomes liable to be quashed. In the case at hand, the petitioners being not related to the husband of the deceased can not be proceeded against under Sections 498-A and 304-B of IPC, and there is no material on record to show them to have abetted the alleged suicidal death of the deceased. Hence, the impugned order of cognizance and that directing for issue of process can not be sustained in law.

8. In the result, the CRLMC stands allowed, and the proceeding before the Court below in I.C.C. No.56 of 2012 is quashed qua the petitioners.

9. Urgent certified copy of this order be granted on proper application.

(S.Pujahari)
Judge

