

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3056 of 2014

Ganesh Panda & others ***Petitioners***
versus-
State of Odisha and another ***Opposite Parties***

CORAM: JUSTICE S. PUJAHARI

ORDER

27.06.2022

Order
No.

08. 1. This matter is taken up through Hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioners with a prayer to quash the order of cognizance dated 02.06.2013 passed by the learned J.M.F.C., Aska in G.R. Case No.128 of 2013 as well as the entire proceeding.
3. Heard learned counsel for the Petitioners and the learned counsel for the State, so also learned counsel for the Opposite Party No.2.
4. It appears that the Opposite Party No.2 initiated the aforesaid case against the Petitioners, who are the husband and in-laws, alleging commission of offence punishable under Sections 498-A/506/34 IPC and 4 of the D.P Act. After filing of the charge sheet, the court has taken cognizance.

5. Learned counsel for the Petitioners submits that since the allegation was made ten years after the marriage, the allegation is inherently improbable and based on concocted facts and as such, for the ends of justice and to prevent the abuse of the process of the Court, this Court should quash the impugned order of cognizance as well as the proceedings against the Petitioners.

6. Learned counsel for the Opposite Party No.2, however, opposes the same to be without any substance.

7. Learned counsel for the State submits that the Petitioners have no case for quashment of the cognizance on the said ground inasmuch as the same cannot be said to be inherently improbable inasmuch as possibility of making dowry torture is not ruled out even at a belated stage. It is stated that when it is never the case of the Petitioners that there is no prima facie material to take cognizance on the offence alleged to proceed against the Petitioners, therefore, the quashment sought for on the ground stated is without any substance, submits the learned counsel for the State. The same is also echoed by the learned counsel for the Opposite Party No.2.

8. Needless to say that incompatibility in relationship between the husband and wife may occur even at a belated stage of marriage for certain reason. Since they were married

for ten years, there was no presumption that their matrimonial life therefore was normal. The wife in this case has alleged that she was physically and mentally tortured for non-fulfillment of illegal demand of dowry by her husband and in-laws. Since FIR lodged discloses cognizable offence, the Police investigated into the matter about the truth and veracity of the same. The Police on investigation of the same has filed the charge sheet pursuant to which the cognizance has been taken and the Petitioner has filed this petition for quashment of the impugned order. It is never the case of the Petitioners that no prima facie material is there disclosing the commission of the said offence and no material whatsoever is there the Petitioners to have committed the aforesaid offence but sought for quashment of the same on the ground of inherent improbability and based on concocted facts.

9. In the case of **Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.**, reported in (2000) 3 SCC 269, the Apex Court have held as follows:-

“Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgement of first information report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is

neither practicable nor warranted. In the event, however, the court on a perusal of the complaint comes to a conclusion that the allegations leveled in the complaint or charge-sheet on the face of it do not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law. To exercise powers under Section 482 of the Code, the complaint in its entirety will have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear ex facie on the complaint. The truth or falsity of the allegations would not be gone into by the Court at this earliest stage. Whether or not the allegations in the complaint were true is to be decided on the basis of the evidence led at the trial.”

10. It is only in cases when the allegations in the complaint do not make out any case against the accused nor do they disclose the ingredients of an offence alleged against the accused or the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion that there is sufficient ground for proceeding against the accused, the power under Section 482 Cr.P.C. has to be exercised to quash the prosecution, is also the view in the case of *Medchl Chemicals & Pharma (P) Ltd.* (supra). Besides the same, if any statutory bar is there to proceed against the accused persons, the Court shall also not proceed against them.

11. On consideration of the facts and submissions made as well as the law laid in the case of *Medchl Chemicals & Pharma*

(P) Ltd. (supra), this Court is of the view that the impugned order of cognizance and proceeding against the Petitioners does not require any interference, as the case of the Petitioners is not covered by any of the circumstances as laid down in the case of *Medchl Chemicals & Pharma (P) Ltd.* (supra) for quashment of the prosecution.

12. Accordingly, the CRLMC stands dismissed.

(S. Pujahari)
Judge

PKS

