

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC Nos. 2789 & 2544 of 2015

CRLMC No.2789 of 2015

Sri Gopal Krushna Das

CRLMC No.2544 of 2015

Sri Prabhat Kumar Das @ Pravat Das
@ Badal Das and others

....

Petitioner(s)

Mr. Banshidhar Baug, Advocate

-Versus-

State of Odisha and another

....

Opposite Parties

Mr. Priyabrata Tripathy, ASC for O.P. No.1

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

16.08.2022

Order No.

- 03.
- Both the petitions are disposed by the following common order since arising out of C.T, Case No.2695 of 2014.
 - Heard learned counsel for the petitioners and leaned counsel for the State.
 - Instant petitions under Section 482 Cr.P.C. have been filed by the petitioners for quashing of the order of cognizance dated 13.04.2015 (Annexure-6) passed in C.T, Case No.2695 of 2014 pending in the file of the learned S.D.J.M., Balasore on the grounds stated therein.
 - In fact, an F.I.R. was lodged by the informant, who happens to be the brother of the deceased, alleging therein that the

deceased sister was subjected to cruelty by the husband and in-laws and thereafter, on the date of accident she was murdered by describing in detail the circumstances under which the incident happened. Consequent upon lodging the F.I.R., Single P.S. Case No.175, dated 29th November, 2014 was registered under Sections 498(A),294,307,506 read with 34 I.P.C. read with Section 4 of D.P. Act. After completion of investigation, charge sheet was submitted under Sections 304-B/302 I.P.C. with other allied offences. After the alleged incident, the deceased succumbed to the injuries. Later on, learned court below passed the impugned order under Annexure-6 against the petitioners with regard to the offences alleged.

5. Learned counsel for the petitioners submits that the order of cognizance dated 13.04.2015 (Annexure-6) is not sustainable in so far as Sections 304-B and 302 I.P.C. is concerned for the reason that no prima face case is made out even after considering the materials on record. While contending so, Mr. Baug, learned counsel for the petitioners refers to the statements of witnesses including of one Subhas Ch. Das @ Kati as at Annexure-4 besides the dying declaration of the deceased. It is further submitted that on a bare reading of the dying declaration, it appears that the victim never alleged anything adverse against her accused husband and others. As per the contention of learned counsel for the petitioners, the deceased has also not alleged domestic violence and therefore, she could not have been killed by the husband or any members from her in-laws' family and as such, offences under Sections 304-B and 302 I.P.C. are clearly not made out.

6. Learned counsel for the State by referring to the statement of the informant recorded under Section 161 Cr.P.C. claiming that the victim was killed by the petitioners by pouring kerosene and setting her to flame contended that since she is alleged to have been killed

and the court below having already taken cognizance of the offences under Sections 304-B and 302 I.P.C., it calls for no interference by this Court.

7. The Court perused the F.I.R. and statements of witnesses i.e. Annexures-2, 4 and 5. The witness, namely, Subhas Ch. Das @ Kati, a neighbour of the petitioners was present nearby when the alleged incident took place. In fact, the husband was stated to be not present at home as also revealed from the record. None of the witnesses whose statements have been recorded under Section 161 Cr.P.C. claimed presence of the accused husband or any members of in-laws' family to be responsible for the death of the victim except the informant. The victim stated in her dying declaration that she accidentally caught fire and no one to be held responsible for the incident. Despite the dying declaration of the deceased and the prime witness being a neighbour, who was present in close proximity, charge-sheet under Sections 304-B and 302 I.P.C. with other offences has been submitted.

8. The Court is aware of the law laid down by the Supreme Court in the case of **State of Haryana and others Vrs. Ch.Bhajan Lal and others** reported in AIR 1992 SC 604, wherein, it has been observed that under certain circumstances, the High Court may interfere exercising jurisdiction under Article 226 of the Constitution of India and Section 482 Cr.P.C. and quash a proceeding if no prima facie case is made out. In the present case, after having perused the material on record particularly the dying declaration of the deceased and considering the submissions of learned counsel for the parties, the Court is of the view that no prima facie case under Sections 304(B) and 302 I.P.C. is made out and therefore, the order of cognizance dated 13.04.2015 is required to be set aside to that extent and accordingly, it is directed.

9. In the result, petitions stand allowed to the extent indicated. Consequently, the order of cognizance dated 13.04.2015 (Annexure-6) passed in C.T, Case No.2695 of 2014 vis-a-vis offences under Sections 304-B and 302 I.P.C. is hereby quashed.

(R.K. Pattanaik)
Judge

U.K.Sahoo

