

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3057 of 2012

Harihara Nayak and others

Petitioners

Mr. J. Mohapatra. Advocate

-Versus-

State of Odisha and another

.... Opposite Parties

Mr. G.N. Rout, ASC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

24.06.2022

Order
No.

- 06.
1. Heard learned counsel for the petitioners and learned counsel for the State.
 2. This is an application under Section 482 Cr.P.C. assailing the correctness of the impugned order of cognizance dated 20th December, 2010 passed in 1.C.C. Case No.87 of 2010 corresponding to G.R. Case No.1393 of 2009 by the learned S.D.J.M., Bhadrak on the grounds inter alia that it is bad in law and liable to be quashed in view of the fact that petitioner Nos. 1 to 3 suffered trial in connection with the case in Sessions Trial No.23/11 of 2010 (Annexure-5), wherein, the Court concerned has acquitted them of all the charges except Section 498-A read with 34 IPC and Section 4 of the Dowry Prohibition Act, inasmuch as, further trial would amount to double jeopardy hit by Section 300 Cr.P.C.
 3. From the facts on record, it is made to understand that initially FIR was lodged by the informant against the petitioners and

was registered as Bhadrak (R) P.S. Case No.361 (24) dated 23rd September, 2009 under Sections 498-A, 302, 304-B, 201 read with 34 IPC and Section 4 of the D.P. Act, consequent upon which, investigation was commenced and ultimately, charge sheet was filed under Sections 498-A, 304-B, 306, 406 read with 34 IPC and Section 4 D.P. Act as against petitioner Nos.1 to 3 only. In the meanwhile, the case against petitioner Nos. 1 to 3 was committed to the Sessions Court for trial. Thereafter, the informant appears to have filed a protest petition on the ground that some of the offences especially Section 302 IPC was deleted and also charge sheet was not filed against petitioner Nos.4 & 5 which was entertained by the learned court below as a complaint. The learned court below, as a result, after receiving the complaint, proceeded to examine the complainant, recorded his initial statement, conducted enquiry under Section 202 Cr.P.C. and finally passed the impugned order dated 20th December, 2010 taking cognizance under Sections 498-A, 302, 304-B read with 34 IPC and Section 4 of the D.P. Act against all the accused persons vide Annexure-5. It is further made to reveal that the trial against petitioner Nos. 1 to 3, who were initially charge sheeted, ended in conviction for offences under Section 498-A IPC and Section 4 D.P. Act with an acquittal vis-a-vis other charges including Section 304-B IPC.

4. In fact, after the charge sheet was filed under Section 304-B IPC and allied offences, the protest petition was filed whereupon cognizance of offences was taken in the year 2010 but the same would have to be tried together with G.R. case which corresponds to Sessions Trial No.23/11 of 2010. In normal course, a complaint arising out of protest petition is clubbed with G.R. case for analogous disposal. However, in the present case, there has been a departure, so to say,

since the order under challenge was passed in 2010 and by then the case against petitioner Nos. 1 to 3 had already been committed. The judgment in Sessions Trial No.23./11 of 2010 was delivered in 2011 i.e. on 17th March, 2011, whereas, the impugned order of cognizance was already in place. It is not explained by the learned Standing Counsel appearing for the State, as to under what circumstances, no joint trial was held which resulted in judgment dated 17th March, 2011 with an order of conviction only under Sections 498-A and Section 4 of the D.P. Act against petitioner Nos. 1 to 3.

5. For the self same cause of action, petitioner Nos. 1 to 3 faced trial. During the pendency of trial, the prosecution did not bring notice to the Sessions Court regarding the protest petition filed by the complainant and entertained by the learned S.D.J.M., Bhadrak which ultimately resulted in passing the order dated 20th December, 2010. Such a situation would have been avoided by having a trial in both the cases before the Sessions Court which is the normal course of business.

6. In any case, petitioner Nos.1 to 3 have been tried by the Sessions Court for an offence of Section 304-B IPC along with other offences including Section 306 IPC which culminated in a judgment dated 17th March, 2011 (Annexure-5) after considering the evidence led by the prosecution vis-à-vis the allegations made in the FIR with a conclusion that they are liable under Section 498-A read with 34 IPC and Section 4 of the D.P. Act only. Under the above circumstances, petitioner Nos. 1 to 3 having faced a full-fledged trial for the same cause of action and the prosecution have had the occasion to lead evidence before the Sessions Court to show a case of Sections 304-B or 302 IPC, notwithstanding the impugned order dated 20th December, 2010, the Court is of the considered view that in order to do substantial justice in the matter, petitioner Nos. 1 to 3 should not again

be subjected to trial and the order of cognizance as against them ought to be set aside and accordingly, it is ordered.

7. In the result, CRLMC stands allowed in part. The impugned order dated 20th December, 2010 passed by the learned S.D.J.M., Bhadrak vis-à-vis petitioner Nos.1 to 3 is hereby quashed. However, it is made clear that the complaint which was entertained by the court below and cognizance taken against the rest of the accused persons, namely, petitioner Nos.4&5 under Sections 498-A, 302 and 304-B read with 34 IPC shall have to proceed for disposal in accordance with law.

8. But, considering the fact that the case is more than 10 years old and that petitioner Nos.4 & 5, who are in-laws of the victim and having regard to the nature of allegations as revealed from the record, the Court is of the further view that they should be directed to surrender and go on bail in the complaint case subject to terms and condition as fixed by the learned court below.

(R.K. Pattanaik)
Judge