

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1739 of 2015

AFR

Bichitrananda Paramanik Petitioner
Mr. Ramani Kanta Pattanaik, Advocate

-Versus-

State of Odisha & Another Opposite Parties
Mr. Pradip Kumar Rout, AGA, OP No.1
Mr. Ashok Kumar Behera, Advocate for OP No.2

CORAM:
JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT:30.11.2022

1. In the instant case, the petitioner has challenged the impugned order of cognizance dated 9th March, 2015 passed in ICC Case No.315 of 2014 by the learned J.M.F.C., Chandikhole on the ground that the same is not tenable in law for the fact that after investigation, on an FIR being lodged, chargesheet under Section 498-A IPC was filed, whereas, he has been proceeded with for an offence under Section 302 IPC on the strength of a complaint received from opposite party No.2.

2. The informant, namely, opposite party No.2, who is the brother of the victim, lodged the FIR, consequent upon which, Dharmasala P.S. Case No.101 dated 27th April 2014 was registered under Sections 498-A, 302 and 506 IPC with the allegation that the petitioner husband committed the alleged murder, as a result of which, the deceased sister died. Upon such FIR being lodged, a case was registered and on completion of investigation, the petitioner was chargesheeted under Section 498-A only. Later to the submission of chargesheet, the complaint was filed as a protest

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petition which was entertained by the learned court below and thereafter, the statement of the opposite party was recorded under Section 200 Cr.P.C., enquiry was conducted in terms of Section 202 Cr.P.C. and finally, the impugned order was passed by taking cognizance of the offences under Section 498-A, 302 and 506 IPC under Annexure-1 which is currently under challenge.

3. Heard learned counsel for the respective parties.

4. Mr.Pattnaik, learned counsel for the petitioner submits that subsequent to the lodging of the FIR, investigation was carried out and chargesheet under Section 498-A was filed. Even though opposite party No.2 informant alleged that the deceased was killed by the petitioner but according to Mr. Pattnaik, it could not be proved and established by medical evidence. As further submitted, soon after the death of the deceased, post-mortem examination over her body was conducted and opinion as to the cause of death was reserved, however, during and in course of investigation, a query was made with reference to the post-mortem report and other material documents, consequent upon which, an expert opinion was offered to the effect that the deceased was suffering from Anemia and Hypokalemic palsy, as a result of which, she developed cardiac arrest and could not recover despite resuscitation and DC shock and was finally declared dead, the fact which was lost sight of by the learned court below before proceeding to take cognizance of offence under Section 302 IPC which is not even corroborated by any evidence. Hence, according to Mr. Pattnaik, learned counsel for the petitioner, the impugned order under Annexure-1 is bad in law. Mr. Rout, learned AGA, on the other hand, justified the order of cognizance and submitted that the learned court below recorded the statement of the opposite party No.2 and received

such other evidence and then proceeded against the petitioner which cannot be faulted with.

5. In support of defence, the post-mortem report and the medical opinion dated 4th August, 2014 are referred in order to justify the cause of death of the deceased due to cardiac arrest and not to be homicidal in nature. That apart, the certified copies of the initial statement recorded under Section 200 Cr.P.C. that of the complainant and the depositions of the witnesses under Section 202 Cr.P.C. have been produced claiming that except such oral evidence, there is no material prima facie to prove and establish a case of murder.

6. Perused the initial statement of the complainant and evidence received during enquiry by the learned court below. There has been an allegation that the petitioner had earlier ill-treated and assaulted the deceased in the year 2012 and all the witnesses including complainant believed that the former to be responsible for the latter's death. As against the chargesheet filed without any final opinion regarding homicidal death of the victim, the court below considered the statement of the complainant as well as witnesses and reached at a conclusion that the petitioner to be responsible for the alleged death. It is not discernable from the impugned order under Annexure-1 as to what persuaded the court below to form such an opinion that the deceased met with a homicidal death and the petitioner to be responsible which suggested to be based on the version of the complainant and oral evidence received during enquiry.

7. The post-mortem report indeed reserved the cause of death of the deceased with the observation that the opinion in respect thereof can be offered only after perusal of the treatment record and chemical examination of the viscera. So far as the opinion on the query is concerned, it is made to appear that the deceased

was admitted in the hospital with a complaint of acute loss of consciousness after a fall and was diagnosed with Anemia and Hypokalemic palsy which finally led to cardiac arrest and she died on 27th April, 2014. If such is the opinion received which apparently guided submission of chargesheet under Section 498-A IPC only, the question then is, what prevailed upon the learned court below to hold a view otherwise that the cause of the death to be homicidal after entertaining the protest petition or for that matter, the complaint.

8. It is well settled law that upon receipt of a chargesheet, a Magistrate is to consider the same and proceed further taking cognizance of the offences. The Magistrate is not bound to accept the chargesheet with the final opinion. Similarly, in case of a final report submitted, the Magistrate may refuse to accept the same leaving couple of options open for him to venture into like to examine the materials submitted along with such report and take cognizance of the offence which means to form an independent opinion irrespective of the conclusion so reached at the end of investigation, or he may even direct further investigation. If the Magistrate is of the view that a response from the informant should be invited, he may do so. In such an event, the informant in response to the notice received from the Magistrate may appear and file a protest petition. If no response is received from the informant, the Magistrate may accept the final report and close the case. At the same time, considering the protest petition to the final report, the Magistrate may independently examine the materials on record collected during investigation and take a call whether any offence is made out for enquiry and trial. If such course of action does not yield any result, in such an eventuality, the Magistrate to treat the protest petition as a complaint and to proceed with it according to law.

9. In the case at hand, the learned court below even after a chargesheet received without an offence under Section 302 IPC, proceeded to take cognizance of the said offence through the complaint filed by opposite party No.2. A question that hinges the most is as to on what basis or foundation, the cognizance of the offence under Section 302 IPC was taken by the court below which is quite obvious to raise. What guided the court below to hold a view that an offence of murder is committed by the petitioner against the backdrop of medical opinion to the contrary received towards the end of the police investigation? In a situation like the present, the role of a Magistrate assumes great significance as he is to look for evidence to find the reason behind the death especially when it is alleged to be homicidal by negated by a final report or a chargesheet without such offence. An enquiry is required, under such circumstances, to elicit the cause of death and to cross-verify the claim of the complainant. Mere oral evidence without more would not be sufficient to concur the view of homicidal death and for the said purpose, a meaningful enquiry would have to be undertaken by the Magistrate. A court is not to engage itself for the formality sake, in an enquiry under Section 202 Cr.P.C., where murder is alleged and to rest its decision on oral evidence only to form its opinion as that could lead to miscarriage of justice subjecting the accused to face a trial for a grievous offence without any justification. An enquiry by a Magistrate is a solemn act which is to be accomplished with all sincerity and fairness since a decision at the end is to show the direction and the way which is to impact the prosecution and the defence if not properly guided. Any lapse or lackadaisical approach of a court during enquiry would have cascading effect jeopardizing the rights of the parties and therefore, its importance is never to be undermined and underestimated. In the case at hand, it is conspicuous to notice that no detailed enquiry was made by the learned court below under Section 202 Cr.P.C. to

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unearth the proximate cause of death of the deceased for the purpose of taking cognizance of the offence but by merely accepting the oral testimony of the witnesses straightaway jumped to a conclusion that the petitioner to have committed the murder without any incriminating material received on record which is clearly indefensible. During such enquiry under Section 202 Cr.P.C., a court does have wide scope and power to search for evidence to satisfy and convince itself about an offence whether to have been committed and could even direct police investigation. So, in such a situation, a purposeful enquiry under Section 202 Cr.P.C. is indispensable otherwise there is every possibility of the court being misdirected. As against the background of a chargesheet under Section 498-A IPC excluding the hypothesis of culpable homicide, the task for the learned court below became extremely onerous while confronted with the protest petition questioning the final opinion of the police investigation. The Court finds that the learned court did not exhaust all the means before reaching at a conclusion and taking cognizance for an offence under Section 302 IPC as it should have conducted the enquiry under Section 202 Cr.P.C. at threadbare instead of merely depending on the oral testimony of the complainant and other witnesses not being supported by any documentary evidence. It ought to have called for such evidence or enquired into during enquiry to ascertain as to if any mischief was committed while causing death of the deceased. In fact, a detailed and meticulous examination of materials was really needed for the learned court below at the threshold itself after receiving the protest petition from the complainant. Instead of following any such course of action, the learned court below simply received the oral evidence without anything more and went ahead taking cognizance of the offence under Section 302 IPC which in the considered view of the Court cannot be sustained in law.

10. Before parting with, it is apposite to make a mention of the decision of the Apex Court in **Pepsi Foods Ltd. And Another Vrs. Special Judicial Magistrate and Others (1998) 5 SCC 749**, which is in the following words:

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

11. Hence, the inevitable conclusion is that the learned court below miserably failed to adhere to the standard needed to maintain before taking cognizance of the offence under Section 302 IPC which is to be revisited and freshly examined.

12. Accordingly, it is ordered.

13. In the result, the petition stands allowed. As a logical sequitur, the impugned order of cognizance dated 9th March, 2015 passed in ICC Case No.315 of 2014 by the learned J.M.F.C., Chandikhole is hereby quashed to the extent indicated above. Consequently, the matter is remitted back to the learned court below to proceed in accordance with law in the light of the direction and observations made herein above.

(R.K. Pattanaik)
Judge

U.K.Sahoo

