

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1077 of 2020

Leena Mishra

.... Petitioner

Mr. Anirudha Das
Advocate

-versus-

State of Odisha

.... Opposite Party

Mr.P.K.Maharaj
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

03.01.2022.

Order No.

05.

1. This matter is taken up through hybrid mode.

2. In the present application filed under Section 482 of Cr.P.C., the Petitioner while questioning the very initiation of the proceeding in Cuttack Mahila P.S. Case No.15/2020 corresponding to G.R. Case No.200/2020 of the court of learned S.D.J.M. (S), Cuttack also seeks quashment of the same.

3. The brief facts, relevant only for deciding the present case are that one Lopamudra Sarangi lodged F.I.R. before the Cuttack Mahila P.S. alleging torture by her in-laws including

the present Petitioner in connection with their demand for dowry. As such, the aforementioned P.S. Case was registered under Sections 498-A/323/307/294/506/34 of I.P.C. read with Section 4 of the D.P. Act. The main grievance of the informant as per the F.I.R. is that she had married one Binayakant Mishra and at the time of marriage several gold ornaments and household articles etc. had been given to his family, but her in-laws demanded more dowry. But because of non-fulfillment of the same her husband and in-laws threatened her with dire consequences and she was continuously ill-treated both physically and mentally. The Petitioner is the sister-in-law of the informant.

4. Heard Mr. Anirudha Das, learned counsel for the Petitioner, Mr. P.K. Maharaj, learned Addl. Standing Counsel for the State and Mr.R.K. Routray, learned counsel for the informant.

5. It is contended by Mr. Das that there is no material to link the present Petitioner with the alleged occurrence and only some omnibus allegations in general terms have been levelled against her. This, according to Mr. Das is more in line with the recent trend of married ladies to entangle all the members of their in-laws' family to wreak personal vengeance. It is further submitted that the Petitioner being herself married much before the marriage of the informant lives separately and, hence, the same by itself falsifies the allegation of dowry torture at her instance. In order to fortify his contentions, Mr.Das has referred

to the following decisions of the Hon'ble Supreme Court namely, ***Geeta Mehrotra & Anr. v. State of U.P. & Anr.***; reported in (2012) 53 OCR (SC)-1257, ***Preeti Gupta and another v. State of Jharkhand and another***; reported in (2010) 7 Supreme Court Cases 667 and of this Court in the case of ***Santanu Kumar Panda and others v. State of Orissa and another***; reported in (2014) 57 OCR-592. On such legal and factual basis, Mr. Das contends that the proceedings being malicious in nature in so far as the present Petitioner is concerned, need to be quashed.

6. Per contra, Mr. P.K.Maharaj, learned Addl. Standing Counsel, has argued that investigation into the case is in progress and whether the Petitioner had any role to play or not in the alleged occurrence, can be duly ascertained by the investigating agency and, therefore, it would be premature for this Court to interfere. Mr. Maharaj has cited the decision of the Hon'ble Supreme Court of India in the case of ***Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and others***; reported in 2021 SCC Online SC 315.

7. Mr. R.K. Routray, learned counsel appearing for the informant, has argued that the contentions raised by the Petitioner do not merit any consideration because specific instances of cruelty attributed to her have been mentioned in the F.I.R.

8. Before advertng to the facts of the case, it would be proper to refer to the case laws cited by the Petitioner. A reading of the decision rendered in ***Geeta Mehrotra & Anr.***(supra) reveals that after going through the facts of the case under consideration, the Hon'ble Supreme Court held that no case was made out against the Petitioner. However, it was specifically observed as under:

“However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the Court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the Court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the Courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the

principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.”

Therefore, in view of the clear dictum of the Apex Court as referred to above, it is only the facts of the case which would decide whether a case for interference is made out or not.

Similarly, in the case of ***Preeti Gupta and another*** (supra), the Apex Court held that the facts of the said case warranted interference, but also held that the Court must be careful to see that its decision in exercise of its power is based on sound principles and it should not be exercised to stifle legitimate prosecution.

In the case of ***Santanu Kumar Panda and others*** (supra), this Court held that mere casual reference of the names of the Petitioners who are family members of the husband in the statements recorded during enquiry conducted under Section 202 of Cr.P.C. will not justify continuance of a criminal proceeding.

9. Now coming to the facts of the case, a perusal of the F.I.R. reveals that there are certain general allegations against all in-laws including the present Petitioner to the effect that the

informant was tortured in connection with demand of Rs.3,00,000/- (Rupees three lakhs), but then there is a specific allegation that the Petitioner instigated the husband of the informant by alleging that the child being carried in her womb belongs to somebody else. Further, the Petitioner also allegedly advised the informant to abort the child on the ground that her husband was a mentally retarded person and as also to divorce him and get married to somebody else. It is also alleged that the mother-in-law and elder sister-in-law conspired with the Petitioner to kill the unborn child of the informant.

10. The allegations being as indicated above, even if accepted on the face value, clearly reveal at least a prima facie case against the Petitioner. In so far as the contention that the Petitioner having married was staying elsewhere, the same being essentially in the nature of a plea of alibi, cannot be proved at this stage. As has been held in catena of decisions including in the case of *Neeharika Infrastructure Pvt. Ltd.*(supra), the High Court should be slow to stifle or scuttle a legitimate investigation. As stated by learned Addl. Standing Counsel, if the Petitioner is really innocent the same can be ascertained in the ongoing investigation. But at this stage, it would be premature for this Court to interfere, particularly, having regard to the allegations made in the F.I.R. which, prima facie, show commission of the alleged offences.

11. For the foregoing reasons therefore, this Court holds that no case for exercise of power under Section 482 of Cr.P.C. is made out on the facts of the present case.

The CRLMC is, therefore, dismissed.

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

A.K.Behera



(Sashikanta Mishra)
Judge