

IN THE HIGH COURT OF ORISSA, CUTTACK

CRL. REV. No. 1093 of 2006

From the order dated 30.08.2006 passed by the Sessions Judge, Bolangir in Sessions Case No. 88-B of 2005 and the order dated 15.12.2015 passed in Sessions Case No. 54-B of 2006.

1. Sushant Kumar Meher
2. Subransu Sekhar Meher Petitioners

-Versus-

State of Odisha Opp. party

CRL. REV. No. 20 of 2016

Dushila Meher Petitioner

-Versus-

State of Odisha Opp. Party

For Petitioners: सत्यमेव जयते Mr. Himanshu Sekhar Mishra

For Opp. party: Mr. Rajesh Tripathy
Addl. Standing Counsel

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing: 25.08.2022 Date of Judgment: 16.09.2022

S.K. Sahoo, J. The petitioners Sushant Kumar Meher and Subransu Sekhar Meher have filed Crl. Rev. No.1093 of 2006 challenging

the order dated 30.08.2006 passed by the learned Sessions Judge, Bolangir (hereafter 'trial Court') in Sessions Case No. 88-B of 2005 in rejecting the petition filed by them under section 227 of Cr.P.C. for their discharge from the offences under sections 302 and 304-B of the Indian Penal Code.

The petitioner Dushila Meher has filed Crl. Rev. No. 20 of 2016 challenging the order dated 15.12.2015 passed by the learned trial Court in Sessions Case No. 54-B of 2006 in framing charges against her for the offences under sections 498-A, 304-B, 302, 201 and 202 read with section 34 of the Indian Penal Code and section 4 of the Dowry Prohibition Act.

Since both the revision petitions arise out of one case and common questions of fact and law are involved, with the consent of the learned counsel for both the parties, those were heard analogously and disposed of by this common judgment.

The learned trial Court has rejected the discharge petition of the petitioners in Crl. Rev. No. 1093 of 2006 as per impugned order dated 30.08.2006 on the ground that charges were framed against the petitioners for the offences under sections 498-A, 304-B, 302, 201 and 202 read with section 34 of the Indian Penal Code and section 4 of the Dowry Prohibition Act

and three witnesses were examined from the side of the prosecution and there are prima facie materials against them.

Pursuant to the query made by this Court as per order dated 17.08.2022 as to why there was delay in filing the discharge petition before the learned trial Court by the petitioners in CRL. REV. No. 1093 of 2006, learned counsel for the petitioners submitted that accused Lingaraj Meher (since dead) approached this Court earlier in CRLMC No. 179 of 2006 challenging the order of framing of charge dated 02.01.2006 and this Court vide order dated 14.02.2006 granted liberty to him to file suitable petition before the learned Court below, whereafter discharge petition was filed by the petitioners and the impugned order dated 30.08.2006 was passed and therefore, there is no delay in filing the discharge petition.

2. The prosecution case, as per the first information report lodged by Yudhistir Meher before the officer in charge of Tusura police station on 31.03.2005 is that he had given marriage of his daughter Bharati Meher (hereafter 'the deceased') to the petitioner no.1 Sushant Meher as per Hindu rites and customs on 04.07.2003. During the marriage, he had given one Hero Hondo motor cycle, gold ornaments weighing about seven tolas and other house hold articles to his son in-law.

In the month of September 2004, the petitioner no.1 told the deceased wife Bharati to bring cash of Rs.25,000/- (twenty five thousand) from her father (informant) for opening of a Homeopathic clinic at village Tusura and her father-in-law Lingaraj Meher (dead), mother-in-law Dushila Meher and brother-in-law Subransu Sekhar Meher along with her husband (petitioner no.1) threatened her to bring the same from the informant. During the Dussehra, when the informant made a phone call to the mother-in-law of the deceased and requested her to allow the deceased to visit her paternal place, she replied that unless Rs.25,000/- was not paid, the deceased would not be allowed to go to her father's place. On the day of Maha Saptimi of Dussehra, the informant along with his elder son-in-law Sashibhushan Meher came to the in-laws' house of the deceased with pooja materials and dresses and by that time the mother-in-law, father-in-law, brother-in-law and the husband of the deceased misbehaved with them due to non-payment of the demanded amount and the informant expressed his inability to fulfill their demand for which the deceased was tortured physically and mentally. On 03.03.2005 the deceased gave birth to a male child and the informant and his wife visited the house of her in-laws on 05.03.2005 and brought back the deceased

along with her son to their house finding inadequate treatment to them. The father-in-law and mother-in-law of the deceased also accompanied them and returned back after staying for three days. On 18.03.2005 the petitioner no.1 visited the house of the informant and insisted for payment of Rs.4,000/- (rupees four thousand), which was fulfilled by the informant, who also promised to pay the balance amount in future. On 20.03.2004 the petitioner no.1 left the house of the informant with the deceased and after four days, the deceased made a telephone call to the informant and told that the in-laws family members were torturing her to which the informant assured her that on 28.03.2005 he would visit Barkani to attend a Ganga Sradha and at that time, he would visit her. On 28.03.2005 at about 11.00 a.m. the informant and his brother Gobardhan Meher got information that the health condition of deceased was very serious. Thereafter, the informant and his brother visited the in-laws' house of the deceased and found that the deceased was lying dead on a cot and dry blood was seen on her mouth. Thereafter, he lodged the F.I.R. basing on which Tusura P.S. Case No. 48 dated 31.03.2005 was registered.

The officer in-charge of Tusura police station took up investigation of the case. It was found during investigation that

the dead body of the deceased was consigned to flame in the cremation ground without reporting at the police station. The statements of the witnesses were recorded. The dowry articles were seized on production of zima of the son of the informant. The I.O. arrested the petitioners in CRL. REV No.1093 of 2006 and forwarded them to Court and on completion of investigation, final charge sheet was submitted on 10.08.2005 against the petitioners under sections 498-A, 304-B, 302, 201 and 202 read with section 34 of the Indian Penal Code and section 4 of the Dowry Prohibition Act showing the petitioner Dushila Meher as an absconder.

3. Mr. H.S. Mishra, learned counsel appearing for the petitioners in both the revision petitions argued that it is a case of suicide and the deceased hanged herself from a beam with the help of a plastic rope and therefore, the submission of charge sheet against the petitioners under section 302 of the Indian Penal Code was unjustified. It is further submitted that from the suicidal note written in odia by the deceased on the prescription pad of Dr. S.K. Meher was seized by the I.O on production by petitioner no.1 in presence of the witnesses on 13.04.2005 in which the deceased had specifically mentioned that whatever step she was taking on that day was on account of the in-laws'

family members and her husband was no way responsible for the same. Learned counsel further submitted that ignoring all these aspects, the I.O. submitted charge sheet and the investigation is perfunctory and after the death of the deceased, the parental side family members of the deceased have foisted this case and therefore, the petitioners should be exonerated from the charges. In support of his submission, Mr. Mishra has placed reliance on the decisions of the Hon'ble Supreme Court in the cases of **State of Karnataka -Vrs.- L.Muniswamy and others reported in A.I.R 1977 Supreme Court 1489, Union of India -Vrs.- Prafulla Kumar Samal and another reported in A.I.R 1979 Supreme Court 366, Niranjan Singh Karam Singh Punjabi -Vrs.- Jitendra Bhimraj Bijja and others reported in A.I.R. 1990 Supreme Court 1962 and Dipakbhai Jagdishchandra Patel -Vrs.- State of Gujarat and another reported in (2019) 75 Orissa Criminal Reports (SC) 1.**

4. Mr. Rajesh Tripathy, learned Additional Standing Counsel for the State of Odisha, on the other hand, submitted that even though it is the case of the accused persons that the deceased committed suicide inside the room by hanging herself from a beam with the help of a plastic rope, they should have

reported the matter to the police so that the post mortem could have been done to ascertain the cause of death, but the accused persons disposed of the dead body in a clandestine manner by consigning to flame in the cremation ground, which has created a strong suspicion against their conduct. It is further argued that the so-called suicidal note of the deceased produced by the petitioner Susanta Kumar Meher goes to show that he is innocent, however, during the course of investigation, nothing was found that the said note was in the handwriting of the deceased. Learned counsel for the State placed the statements of the witness Yudhistir Meher (informant), Akhaya Kumar Meher, brother of the deceased, who have stated about demand of dowry by the petitioners and physical and mental torture on the deceased on account of non-payment of Rs.25,000/- (rupees twenty five thousand) towards dowry. Learned counsel further submitted that letters were written by the deceased to her family members wherein it was indicated how she was subjected to torture by her in-laws' family members. It is further argued that when the informant along with his brother Gobardhan Meher arrived in the house of the petitioners on receiving message about the serious health condition of the deceased, they found that the deceased was found dead on a cot in her bed room and

there was dry blood on her mouth and when the in-laws family members were confronted, they begged apology and the informant became senseless. Learned counsel further submitted that since there are sufficient grounds for proceeding against the petitioners on the basis of the available materials on record, the revision petition should be dismissed.

5. In **L.Muniswamy** (supra), the Hon'ble Supreme Court in paragraph 7 held as follows:

".....It is clear from the provision that the Sessions Court has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion, for reasons to be recorded, that there is not sufficient ground for proceeding against the accused. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused. The High Court therefore is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case....."

In **Prafulla Kumar Samal** (supra), the Hon'ble Supreme Court in paragraph 7 held as follows:

"Section 227 of the Code runs thus:-

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

The words 'not sufficient ground for proceeding against the accused' clearly show that the Judge is not a mere post-office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence

recorded by the police or the documents produced before the court which ex-facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

In **Niranjan Singh Karam Singh Punjabi** (supra), it has been held as follows:

“.....it seems well-settled that at the Sections 227-228 stage, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face-value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.”

In **Dipakbhai Jagdishchandra Patel** (supra), the Hon'ble Supreme Court in paragraph 21 has held as follows:-

“21. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the

material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the Accused has committed the offence."

In case of **Sajjan Kumar -Vrs.- Central Bureau of Investigation reported in (2010)47 Orissa Criminal Reports (SC) 650**, it is held as follows:-

"17. On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:

- (i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.
- (ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.
- (iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

- (iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.
- (v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.
- (vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.
- (vii) If two views are possible and one of them gives rise to suspicion only, as

distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

This Court in the case of **Bikuna Sahu and others -Vrs.- State of Orissa reported in (2017)66 Orissa Criminal Reports 654** has held as follows:-

".....Considering the provisions under sections 227 and 228 of Cr.P.C., it is apparent that the Judge concerned has to consider all the records of the case, the documents placed, hear the submissions of the accused and the prosecution and if there is 'no sufficient ground' for proceeding against the accused, he shall discharge the accused by recording reasons. If after such consideration and hearing, as mentioned in section 227 of Cr.P.C., the Judge is of the opinion that 'there is ground for presuming' that the accused has committed an offence, he is free to direct the accused to appear and try the offence in accordance with the procedure after framing charge in writing against the accused. The probative value of the materials collected by the prosecution cannot be gone into at the stage of framing of charge and the materials are to be accepted as true at that stage. Whether the accused in fact committed

the offence or not, can only be decided in the trial. A mini trial at the stage of framing of charge is not permissible.”

In the case of **Manoj Kumar Bohidar -Vrs.-State of Orissa reported in (2017) 66 Orissa Criminal Reports 608**, this Court has held as follows:-

“Law is well settled that the truthfulness, sufficiency and acceptability of the materials produced at the time of framing of charge can be done only at the stage of the trial. Even a strong suspicion founded upon materials on record would justify the framing of charges against the accused. If the materials brought on record reasonably connect the accused with the crime, no further inquiry has to be conducted at that stage inasmuch as weighing the pros and cons of the case, alleged improbability feature and meticulous examination of the evidence is not required. The defence plea is not to be considered at that stage which can be done only in rare and exceptional cases. ”

6. Adverting to the contentions raised by the learned counsel for the respective parties and keeping in view the ratio laid down in the aforesaid decisions, on perusal of the case records, it appears that the family members of the deceased have consistently stated about the demand of dowry and

physical and mental torture on the deceased on account of non-payment of Rs.25,000/- (rupees twenty five thousand), which was demanded by the petitioner Sushanta Kumar Meher for opening of a homeopathic clinic. Letters were seized which were written by the deceased to her elder sister Minati Meher, who was staying at Dubai, which are dated 11.08.2004, 27.12.2004 and another date (not noted) in which the deceased has expressed as to how she was subjected to torture by her husband and in-laws family members for dowry. There are also materials on record to show that even though the accused persons stated that the deceased committed suicide by hanging herself from a beam with the help of a plastic rope, but the dead body was disposed of and consigned to flame without reporting at the police station. The authenticity of the so-called suicidal note of the deceased, which was produced by the petitioner Sushant Kumar Meher could not be established. The petitioner Dusila Meher absconded for which charge sheet was submitted showing her as an absconder.

7. On a careful analysis of the case records, I am of the humble view that there are grounds for presuming that that the petitioners have committed the offences under which charges have been framed. The materials on record indicate that the

petitioners not only subjected the deceased to physical and mental torture in connection with demand of dowry, but also the deceased met with an unnatural death and for disappearance of evidence, the accused persons cremated the dead body of the deceased in a clandestine manner by consigning to flame without reporting to the police authorities and thus, the learned trial Court is quite justified in framing the charges.

Accordingly, both the revision petitions being devoid of merits stands dismissed.

Since the occurrence is of the year 2005 and charge has already been framed, the learned trial Court shall do well to conclude the trial within a period of six months from the date of receipt of the order.

It is made clear that any observation made while adjudicating this revision petition challenging the legality of framing of charge should not influence the learned trial Court and he has to strictly proceed to decide the case on the basis of the evidence to be adduced by both the sides at the time of trial.

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S.K. Sahoo, J.