

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 329 of 2022

Arati Ray & Another

....

Petitioners

Mr. Arijeet Mishra, Advocate

-Versus -

State of Odisha

....

Opposite Party

Mr. P. Tripathy,

Additional Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

08.12.2022

Order No.
05.

1. This matter is taken up through Hybrid mode.
2. Heard learned counsel for the petitioners and learned Additional Standing Counsel for the State.
3. The petitioners seek to challenge the order dated 27.06.2022 passed by the Learned J.M.F.C., Thakurmunda, Mayurbhanj in connection with Thakurmunda P.S. Case No. 27 of 2021 in C.T. Case No. 238 of 2021 whereby the application filed by them under Section 239 Cr.P.C for discharge was rejected.
4. The prosecution case, briefly stated is that one Monalisa Das lodged F.I.R on 19.03.2021 before the Thakurmunda Police Station stating therein that her husband died due to Hepatitis-B on 10.09.2019. Thereafter the petitioners, who are her parents-in-law, abused her in filthy language and also subjected her to different kinds of torture. They also demanded cash of Rs.2 Lakh from her and even on the day of the funeral ceremony of her husband, they drove her out from her matrimonial home.
5. The application for discharge was filed on the ground that the

ingredients of the alleged offences are not made out.

6. Mr. Arijeet Mishra, learned counsel for the petitioner submits that the ingredients necessary to constitute the offences under Section 406/506 & 323 of the I.P.C are not made out, even if the prosecution case as laid is accepted on the face value. As regards the other offences, it is submitted that the question of subjecting the victim to cruelty in connection with demand for dowry does not arise in view of the fact that her husband had expired and moreover, she was residing in her parental house at the time of her death. All these facts can be ascertained on the basis of materials produced by the prosecution and do not require any further evidence.

7. Learned counsel for the State has opposed the application by submitting that the ground raised by the petitioners can be considered only on the basis of evidence adduced during trial. At this stage, the Court is only required to make a prima facie assessment of the materials and therefore, there is no illegality or infirmity in the impugned order warranting interference by this Court.

8. I have considered the submissions made by the parties and have also gone through the impugned order and materials on record. Learned Court below has rightly referred to the provisions under Section-239 of the Cr.P.C. to be satisfied that there are sufficient materials available against the accused persons to frame charge against them. This Court finds nothing wrong in the impugned order so as to interfere. However, it is stated at the Bar that charge has not yet been framed. Therefore, notwithstanding rejection of the application of the petitioners for discharge, the Court while framing charge can still consider the materials on record in light of the contentions raised by the petitioners as regards the existence or otherwise of the ingredients of the specific offences alleged so as to form a presumptive opinion regarding commission of such offences

by the accused persons. It is needless to mention that in doing so learned Court below shall consider the contentions raised by the petitioners.

9. With the aforesaid observation, the CRLREV is disposed of.

10. Urgent certified copy of this order be granted as per rules.

(Sashikanta Mishra)
Judge

Balaram

