

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2151 of 2022

Bimal Kumar Rout

....

Petitioner

Mr.Anirudha Das, Advocate

-Versus-

State of Odisha

....

Opposite Parties

Mr. Tapas Kumar Praharaj,SC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

28.11.2022

Order No.

03.

1. Heard Mr. Das, learned counsel for the petitioner and Mr. Praharaj, learned counsel for the State.

2. Instant petition Section 482 Cr.P.C is at the behest of the petitioner for quashing of the criminal proceeding and its continuation in connection with G.R. Case No. 227 of 2005 corresponding to Gondia P.S.Case No. 42 of 2005 pending in the file of learned JMFC, Gondia, Dhenkanal and to discharge him from the alleged charges.

3. Learned counsel for the petitioner submits that the petitioner was the husband of the deceased and he was chargesheeted along with the other accused persons under Section 498-A and 304(B) read with 34 IPC besides Section 4 of Dowry Prohibition Act. It is further submitted that in the meantime, three other accused persons including the parents of the petitioner faced trial in C.T. Case No. 79 of 2006/12 of 2007 and at last, they were acquitted of the charges by a judgment dated 27th September, 2008 of the learned Additional Sessions Judge, FTC., Dhenkanal.

4. It is contended by Mr. Das that since other accused persons have been acquitted of the levelled charges by a judgment wherein the informant and other witnesses did not support the prosecution case, no fruitful purpose would be served to subject the petitioner to a full blown trial for the same offences and evidence and therefore, the criminal proceeding pending before the learned court below awaiting commitment corresponding G.R. Case No. 227 of 2005 should be quashed in the interest of justice and he should be discharged forthwith.

5. Mr. Praharaj learned counsel for the State on the other hand submits that the petitioner has been shown as an absconder in the chargesheet and therefore, he did not face any trial and other accused persons were tried before the learned Sessions court which of course ended in an order of acquittal in C.T. Sessions No. 79 of 2006/12 of 2007. It is contended that such order of acquittal as against the accused persons cannot be a ground to discharge the petitioner and for that criminal proceeding which is currently pending before the learned JMFC., Gondia in G.R. Case No. 227 of 2005 in G.R. Case No. 227 of 2005 cannot be terminated. While advancing such an argument, Mr. Praharaj cites a decision of this Court in **Hidyat Khan@ Hidyatulla Vrs. State of Odisha** decided in CRLMC No. 1244 of 2004 and disposed of on 26th September, 2017. By placing reliance on said decision, Mr. Praharaj, learned counsel for the State submits that since the petitioner was an absconder and did not face the trial, he cannot be allowed to challenge the criminal proceeding or the acquittal judgment dated 7th September, 2008 in C.T. Sessions Case No. 79 of 2006/12 of 2007 for the learned Sessions Court.

6. In response to the above, Mr. Das, learned counsel for the petitioner refers to a decision of **CBI Vrs. Akhilesh Singh 2005(Vol.30) OCR 201** and submits that incase, an accused is acquitted for the self-

same charge, another accused who is yet to face the trial should not be subjected to as it would be an abuse of process of law.

7. A copy of the chargesheet is at Annexure-1 and the same is perused by the Court. Initially, on a report being lodged by the informant, Gondia P.S. Case No. 42 dated 6th March, 2005 was registered under Sections 498-A, 302 and 304 B read with 34 IPC which however led to submission of chargesheet under Section 498-A and 304 B read with 34 IPC excluding Section 302 IPC. It is further made to appear that the other three accused persons who have been in-laws of the deceased faced the trial and as mentioned earlier, all of them were acquitted of the alleged charges after a full-fledged trial. A copy of the judgment in C.T. Sessions No. 79 of 2006/12 of 2007 is at Annexure-3 and the same is gone through the Court.

8. Mr. Das, learned counsel for the petitioner produced copies of the depositions of all the witnesses examined from the side of the prosecution. P.W. 7 is the informant and his evidence appears to be hostile. In fact, the prosecution examined P.W.7 in terms of Section 154 of the Indian Evidence Act. The Court finds that majority of the witnesses though have been examined during trial under Section 154 of the Indian Evidence Act but he did not support the prosecution case. More particularly, P.W. 7 being the informant clearly turned hostile and deposed that he was mentally upset at the time of lodging the F.I.R. and denied all the suggestions of the prosecution including the allegations of demand and ill treatment meted out to the deceased.

9. Considering the nature of evidence received by the learned Sessions court based upon which an order of acquittal was passed and having gone through the depositions of all witnesses of the prosecution including that of P.W.7, the Court finds that it was more or less hostile, on the strength of which, the trial ended in acquittal. A copy of the

judgment in C.T.Sessions No. 79 of 2006/12 of 2007 as at Annexure-3 is also perused. In fact the learned Sessions court after having discussed the on record found it to be hostile and on that basis held that the levelled charges could not be established against the accused persons, who are the in-laws of the petitioners. The petitioner to be one of the accused persons and husband of the victim and appears to be on similar footing. Having regard to the nature of evidence on record received by the learned Sessions court and on the account of order of acquittal dated 7th September, 2008 in C.T. (Sessions) No. 79 of 2006/12 of 2007, the Court is of the considered opinion that no worthy purpose would be served by directing the petitioner to face the trial. It is most unlikely that the prosecution would be able to submit any evidence supporting its case vis-à-vis the petitioner since all the material witnesses examined by the learned Sessions court in a trial turned hostile including the father of the deceased examined as P.W.7. There is also remote possibility of conviction against the petitioner in view of the nature of evidence received during such trial. Thus, it is a fit case, where extra-ordinary jurisdiction this Court should be exercised to quash the criminal proceeding against the petitioner as no fruitful purpose would be served by subjecting him to a trial.

10. Accordingly, it is ordered.

11. In the result, CRLMC stands allowed. Consequently, the criminal proceeding in connection with G.R. Case No. 227 of 2005 corresponding to Gondia P.S. Case No. 42 of 2005 pending in the file of learned JMFC, Gondia vis-à-vis the petitioner is hereby quashed.

12. Urgent certified copy of this order be issued as per rules.

(R.K. Pattanaik)
Judge

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