

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC NO.2057 of 2016

(In the matter of application under Section 482 of the Criminal Procedure Code, 1973.).

Binapani Prusty ***Petitioner***

-versus-

State of Orissa ***Opposite Party***

For Petitioner : ***Mr. A. Das , Advocate***

For Opposite Party : ***Mr. S.R. Roul, ASC***

CORAM: ★ **JUSTICE G. SATAPATHY** ★

सत्यमेव जयते

DATE OF HEARING :18.10.2022
DATE OF JUDGMENT:29.11.2022

G. Satapathy, J.

1. The petitioner has approached this Court in an application U/S.482 of Cr.P.C. praying therein to quash the order passed on 25.02.2013 by learned J.M.F.C.(O), Bhubaneswar in G.R. Case No. 101 of 2010 issuing process of summon against her on

receipt of supplementary charge-sheet in G.R. Case No. 101 of 2010 in which cognizance of offences U/Ss.498(A)/302/304(B)/506/34 of the I.P.C. read with Section 4 of D.P. Act was already taken pursuant to charge-sheet submitted on 02.06.2010. The petitioner being the sister-in-law of the deceased prays for the relief mainly on the ground of acquittal of co-accused husband and parents-in-law of the deceased in a due trial conducted by the Court of competent jurisdiction.

2. Facts in nut shell are one Suchismita Prusty had got married to one Narayan Prusty of village Seulkunda on 12.05.2009 according to their caste and customs and at the time of solemnization of marriage, the father of the bride had given cash of Rs.2,00,000/- and other household articles as per demand but in spite of this, the groom and his family members including the petitioner were subjecting the bride to physical as well as mental torture and even not allowing her to talk over phone with her family members. The father of the bride had come to know from his daughter that unless additional cash of Rs.50,000/- and one gold bracelet weighing 20 grams was given to the groom, they would not allow her to go to her parents house. While the matter stood thus, on 02.02.2010 in the evening at about 5.30

P.M. the father of the bride got telephonic call from the elder brother of the groom about admission of bride in Capital Hospital, Bhubaneswar and on his reaching at Capital Hospital, Bhubaneswar, he found his daughter who has completely burnt. Finding his daughter in critical condition, he shifted her to S.C.B. Medical College and Hospital, Cuttack and during treatment when he asked his daughter, she disclosed before him that while she was cooking, her parents-in-law and husband set her on fire after pouring kerosene. The Bride also disclosed that her brother-in-law and elder sister-in-law were threatening for this consequence. The bride was again shifted to Vivekananda Hospital, Bhubaneswar. On 03.02.2010 at 2.30 P.M. the father of the bride lodged F.I.R. at I.I.C., Balipatna P.S. and the investigation ensued, but the victim bride could not survive and succumbed to the burn injuries at Vivekananda Hospital, Bhubaneswar while undergoing treatment. After closure of investigation, the I.O. submitted charge-sheet and cognizance of offences U/Ss. 498(A)/302/304(B)/506/34 of the I.P.C. read with Section 4 of D.P. Act was taken which resulted in trial in C.T. Case No.15/68 of 2011 in the Court of learned Adhoc Additional District and Sessions Judge, F.T.C. No.II, Bhubaneswar in which

the husband Narayan Prusty and parents-in-law namely, Hadubandhu Prusty and Guni Prusty got acquitted after trial in the said Court.

After acquittal of co-accused husband and parents-in-law, the petitioner being the sister-in-law of the deceased has filed this CRLMC to quash the impugned order of issuance of process against her on the ground of acquittal of principal co-accused persons.

3. Mr. Anirudha Das, learned counsel for the petitioner has submitted that the petitioner is the married sister-in-law of the deceased and there is no reliable allegation against her in this case as she was residing in a separate mess and there is hardly any overt act being attributed against her and, therefore, the issuance of process against the petitioner is mere an eye wash and the petitioner having not committed any offence, the criminal proceeding against her is an abuse of process of law. It is also submitted that the principal co-accused husband and parents-in-law of the deceased against whom the main allegation of committing murder and dowry death of the deceased are directed had already been acquitted in a full-fledged criminal trial which was conducted by learned Adhoc Additional District and

Sessions Judge, F.T.C. No.II, Bhubaneswar by following due procedure of law and the petitioner being the sister-in-law and having omnibus lesser allegation of threatening the deceased to face such consequence, the present proceeding would be an abuse of process of the Court. Learned counsel for the petitioner by filing the certified copy of depositions of all the witnesses examined in the trial and the copy of the judgment, has submitted that none of the material witnesses including the parents of the deceased have supported the prosecution case and the parents of the deceased have only stated about the death of the deceased on account of burn injuries, but they have never stated in their evidence that the accused persons were responsible for the death of the deceased. It is also submitted that the father of the deceased being examined as P.W.7 has stated in the Court that her daughter was living happily in her in-laws house and her son-in-law and daughter were admitted at S.C.B. Medical College and Hospital, Cuttack for burn injuries on their person and her daughter was unable to speak and he, thereby, could not ascertain how his daughter caught with fire and how her daughter died at the Vivekananda Hospital, Bhubaneswar. It is further submitted that the principal accused persons having already been acquitted

in this case and the family members of the deceased having not stated anything against the principal accused persons for any offence in their evidence, it would be definitely an abuse of process of Court, if the criminal proceeding against the petitioner who is the married sister-in-law of the deceased residing in separate mess is allowed to continue. Learned counsel for the petitioner by relying upon the decisions in *Central Bureau of Investigation Vrs. Akhilesh Singh; (2005) 30 OCR(SC) 201, Aditya Kumar Rath Vrs. State of Orissa; (2008) 41 OCR 233, Preeti Gupta & another Vrs. State of Jharkhand & another; (2010) 47 OCR(SC) 367, Geeta Mehrotra & another Vrs. State of U.P. & another; (2012) 53 OCR(SC) 1257, Santanu Kumar Panda & others Vrs. State of Orissa and another; (2014) 57 OCR 592 and Mirza Iqbal @ Golu and another Vrs. State of Uttar Pradesh and another; (2022) 86 OCR(SC) 632* has prayed to quash the impugned order of issuance of process and consequently the criminal proceeding against the petitioner.

4. Mr. S.R. Roul, learned counsel for the State in reply, however, has vehemently contended that the sister-in-law having not faced the trial, it would be improper to quash the criminal proceeding in the nature of this case in which the bride was

allegedly done to death by setting her on fire by their in-laws and there is material allegations against the petitioner for committing the crime. It is therefore, prayed to dismiss the CRLMC.

5. Admittedly, the petitioner Binapani Prusty is the sister-in-law of the deceased and she claims to be innocent of the offences under which cognizance was taken. The petitioner specifically prays to quash the order of issuance of process against her on the ground of acquittal of co-accused persons who are father-in-law, mother-in-law and husband of the deceased in a due trial conducted by learned Addl. District & Sessions Judge, Fast Track, Bhubaneswar in Criminal Trial No. 15/68 of 2011 in addition to only allegation against her for threatening the deceased of this consequence. Indisputably, process was issued against the petitioner by the impugned order at Annexure-1 pursuant to supplementary charge sheet submitted against her. Addressing the submission made for the State, there appears no dispute about the main allegation of setting the deceased on fire is against the husband, father-in-law and mother-in-law, who admittedly having faced the trial in Criminal Trial No. 15/68 of 2011 for such allegation have already been acquitted therein by the learned Addl. District & Sessions Judge, Fast Track,

Bhubaneswar after appreciating the evidence of eleven witnesses. Of the 11 witnesses, except the doctor and I.O. being examined as P.Ws. 10 and 11, none including the parents of the deceased have supported the prosecution case and they have been declared hostile. It transpires from the evidence of P.W.9 at the time of occurrence, besides the deceased, her husband and parents-in-law were present in the house of the accused persons, but the present petitioner is the married sister-in-law and she was residing in a separate mess at the time of occurrence. The informant-P.W.7 who is the father of the deceased had never whispered a single word against the accused persons in Criminal Trial No. 15/68 of 2011 and his categoric evidence was that after marriage, his daughter was living happily in the house of her in-laws. Further, P.W.7 had not made any one responsible for his daughter's death, no matter he had alleged against the above three accused persons to have killed his daughter by setting her on fire after pouring kerosene, but such allegation has never been made against the present petitioner. Similarly, P.W.6 in Criminal Trial No. 15/68 of 2011 being the mother of the deceased had stated that her daughter was staying in her in-laws house happily after the marriage and her daughter died on 13.02.2010 in Vivekananda

Hospital due to burn injuries. Both P.Ws. 6 and 7 while not revealing the oral dying declaration of the deceased made to them in the evidence were stubborn enough to deny to the suggestion of the prosecution that from their daughter they came to know that her husband, father-in-law and mother-in-law poured the kerosene on her body and set her on fire. Besides, P.Ws.6 and 7, other private witnesses have not stated anything against commission of murder and dowry death of the deceased in their respective evidences.

6. Although, the petitioner has not faced the trial in this case, but above being the evidence of private witnesses and the evidence of doctor recording dying declaration being found not helpful to the prosecution by the trial Court, whether there would be any fruitful purpose of exposing the petitioner to face the criminal trial again in which is there any possibility of improvement of evidence of prosecution witnesses so as to fasten the criminal liability for the offences alleged against the petitioner. Criminal trial in a case of dowry death and murder of bride for demand of dowry is primarily focused against the husband and parents-in-law which is quite discernible from the words “husband or any relatives of her husband” used in the

Section 304-B of IPC, but in this case the husband and parents-in-law against whom the main allegation of setting the bride on fire is directed have already been acquitted by the trying Court for want of evidence and a careful approach of evidence tendered in the trial against the husband and parents-in-law would go to indicate that there is hardly any scope for prosecution to improve its evidence. It is not in dispute that there is no allegation against the petitioner for setting the deceased bride on fire and there appears some omnibus allegation for threatening the bride for the consequence. The petitioner in this case is a married lady and residing separately and no witness in Criminal Trial No. 15/68 of 2011 has referred to her involvement in this case, even not in casually also. In *Surya Narayan Bisoi Vrs. State of Orissa and another; (2014) 1 OLR 795*, this Court by taking into consideration of acquittal of co-accused persons has held that no useful purpose would be served by allowing continuance of the criminal proceeding initiated against the present petitioner, especially when the chances of his ultimate conviction are bleak. Similarly, in *Sri Nina @ Niranjana Mohapatra Vrs. State of Orissa; (2014) II OLR 528*, in which quashing of cognizance for offences U/Ss. 302/364/323/294/120-B(I)/506 of IPC was sought

for on the ground of acquittal of principal accused persons, this Court held that continuance of the criminal proceeding against the present petitioner would be an abuse of process of Court, especially when the chances of his ultimate conviction are bleak.

7. On numerous occasions constitutional Courts in India have been confronted with the questions to examine the legal positions for quashing of criminal proceeding and out of such cases, in ***R.P.Kapoor Vrs. State of Punjab; AIR 1960 SC 866***, the Apex Court had summarised broadly in the following three cases where inherent power can and should be exercised to quash the proceedings;

(i) where it manifestly appears that there is a legal bar against the institutions or continuance of the proceeding.

(ii) where the allegations in the First Information Report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged.

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

8. ***In Madhavrao Jiwajirao Scindia and others Vrs. Sambhajirao Chandrojirao Angre and others; (1988) 1 SCC 692*** the Apex Court has held as under:-

“When a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the

Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

9. In ***Preeti Gupta and another Vrs. State of Jharkhand and another; (2010) 47 OCR (SC) 367***, the Apex Court in paragraph-33 has held thus:-

“ The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The Courts had to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband’s close relations who had living in different cities and never visited or rarely visited the place where complainant resided would have an entirely different complexion. The allegations of the complaint are to be scrutinized with great care and circumspection.”

10. In ***Mirza Iqbal and another Vrs. State of Uttar Pradesh and another; (2022) 86 OCR (SC) 632***, following its earlier decision in ***Geeta Mehrotra and Anr. Vrs. State of Uttar Pradesh and another;(2012) 10 SCC 741***, wherein it was observed that *family members of husband were shown as*

accused by making casual reference to them and taking cognizance in such type of cases results in abuse of judicial process, the Apex Court has quashed the order of cognizance for offences U/Ss. 498-A/323/504/506/304-B of IPC and Sections 3 and 4 of the D.P. Act concerning the brother-in-law and sister-in-law of the deceased.

11. The consideration for quashing the proceeding would have been different, had the petitioner been the husband of the deceased inasmuch as, the primary liability for protecting the wife is on the husband and in case of torture of wife as contemplated either in Section 498-A or 304-B of IPC is very much referable to husband or relatives of husband of a woman subjecting her to cruelty and the benevolent objects behind enacting the aforesaid penal sections are to prevent torture to a women by her husband or by relatives of her husband by way of punishment to erring husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry.

12. In this case, the petitioner is the married sister-in-law of the deceased who was residing separately and the allegation appearing against her is omnibus in nature. It is also not in

dispute that the name of the petitioner was brought on record pursuant to a supplementary charge sheet, which was submitted after conclusion of main criminal trial in Criminal Trial No. 15/68 of 2011 and process was accordingly issued against the petitioner thereafter, but the husband and parents-in-law were acquitted in such criminal case in Criminal Trial No. 15/68 of 2011 after facing the trial. It is also not uncommon about over implication of relatives of the husband by or on behalf of bride, even those relatives of husband has feeble chance of harassing the bride, especially when they reside separately in separate mess but such situation has no universal application. In this case, when none of the private witnesses have implicated remotely the husband and the parents-in-laws of the deceased for any offence during trial and the dying declaration which was directed only against the husband and parents-in-laws, as recorded by doctor was found not reliable against them, who were alleged to have set the deceased on fire, resulting in their acquittal for want of evidence, but the present petitioner who is admittedly the sister-in-law of the deceased and residing in a separate mess with a lesser allegation of threatening the deceased to face such consequence and there is absolutely no allegation against the

petitioner for either setting the deceased on fire or assisting the co-accused in setting the deceased on fire, and she was having not present at the time of occurrence and therefore, the chances of her ultimate conviction appear to be bleak inasmuch as when the main allegations against co-accused husband and parents-in-law were found to be not established on the evidence of private witnesses led in this case since all of them had become hostile to prosecution, how the allegations against present petitioner would be established by the same set of witnesses who were found reluctant to support the prosecution case. Hence, in the present facts and circumstances, the process issued against the petitioner pursuant to submission of supplementary charge sheet which was submitted after conclusion of the trial in main case in which, husband and parents-in-laws were acquitted by the learned trial Court, is considered on the analysis of the present premises of the case to be nothing but an abuse of process of Court in view of the law laid down by *Geeta Mehrotra(supra) & Madhavrao(supra)* and, therefore, to secure the ends of justice the impugned order passed on 25.02.2013 in G.R. Case No. 101 of 2010 of learned J.M.F.C.(O), Bhubaneswar together with the charges against the

petitioner needs to be quashed and the same is, accordingly, quashed.

13. Resultantly, the CRLMC is allowed on contest but in the circumstance without any costs. As a necessary corollary, the impugned order passed on 25.02.2013 in G.R. Case No. 101 of 2010 of learned J.M.F.C.(O), Bhubaneswar together with the charges against the petitioner is quashed.



(G. Satapathy)
Judge

*Orissa High Court, Cuttack,
Dated the 29th of November, 2022/Kishore*