

IN THE HIGH COURT OF ORISSA AT CUTTACK**CRLMC NO.2653 of 2021**

(This is an application under Section 482 of the Code of Criminal Procedure, 1973 for quashing the criminal proceeding initiated against the Petitioner arising out of G.R. Case No. 108 of 1992 on the file of J.M.F.C., Soro (now S.T. Case No. 99 of 2021 of the court of the learned Sessions Judge, Balasore).

Smt. Chanchala Panda @ Panigrahi ***Petitioner***

-versus-

State of Orissa ***Opposite Party***

Advocates appeared in the case through Hybrid Mode:

For Petitioner : ***Mr. Vivekanand Jena, Adv.***

For Opposite Party : ***Mr. Karunakar Gaya, ASC***

CORAM:

JUSTICE V. NARASINGH

DATE OF HEARING :21.03.2022

DATE OF JUDGMENT:21.03.2022

V. Narasingh, J.

1. This is an application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to “ as Cr.P.C.”

for brevity) for quashing the criminal proceeding arising out of G.R. Case No. 108 of 1992 (S.T. Case No. 99 of 2021 on the file of the learned Sessions Judge, Balasore) and the order of cognizance dtd. 06.02.1996 passed by the Judicial Magistrate First Class, Soro at Annexure-3.

2. The brief facts germane for just adjudication of the lis is stated hereunder.

A written complaint was filed in Khaira Sadar P.S. against the present petitioner along with six (6) others, on 01.03.1992, alleging death on account of torture of one Sakuntala Das (since deceased), who is the sister of the informant-Mayadhar Das. On the basis of such allegation, Khaira Sadar P.S. Case No. 29 of 1992 under Sections-498(A)/304-B/34 of the I.P.C, read with Section-4 of the Dowry Prohibition Act was instituted.

3. It was stated in the said F.I.R, that the sister of the informant- Sakuntala was married to one Lalatendu Panda about five (5) years back and was blessed with a daughter and a son. It was alleged that, persistent demand for dowry of Rs.10,000/- (Rupees Ten Thousand) could not be met by the family of the deceased. And, the accused persons kept torturing Sakuntala which she narrated before her parents and her relatives. But keeping the family's honour in mind the matter was never reported to the police. It was further alleged

by the informant that, on 19.03.1992 when the informant had been to the house of his sister to meet her, he could not find her in the house of the in-laws and he came to know that, his sister-Sakuntala was undergoing treatment at Agarapada Hospital. When he went to the hospital he found her dead. On enquiry, he found out that Sakuntala has died of poisoning. Suspecting that Lalatendu Panda, the husband along with his parents and their daughters had murdered his sister by administering poison he lodged the complaint and on the basis of such allegation aforesaid, the Khaira P.S. Case No. 29 of 1992 inter alia under Section-304-B, I.P.C was registered.

4 Taking into account the allegation and the sections under which the case was registered, it was investigated into by an Officer in the rank of D.S.P.

5. After thorough investigation on 07.01.1996, the Investigating Agency submitted final report “ for insufficient evidence for Charge-sheet ”. Copy of which has been annexed as Annexure-2. On perusal of such Final Report, it is seen one of the witnesses examined is Mayadhar Das, the informant and the brother of the deceased.

6. When such Final Report came up for consideration before the J.M.F.C., Soro, the learned Magistrate refused to accept the Final Report and took cognizance by order dtd.

06.02.1996 at Annexure-3 against four persons 1- Lalatendu Panda (husband), 2- Laxmidhar Panda, 3. Smt. Satyabhama Panda, and 4- Kumari Chanchala Panda (sister-in-law of the deceased- present petitioner).

7. It is apt to state here that one of the accused namely- Lalatendu Panda, the husband faced trial in which the petitioner is a co-accused. By judgment dtd. 18.05.2009 (Annexure-4) in S.T. Case No. 38/66 of 2009 the learned Ad-hoc Additional Sessions Judge, Balasore considering the materials on record, more particularly the statement of P.W.1-informant-brother of the deceased, that he suspected his sister might have committed suicide due to stomach pain and suffering and did not support his version that his sister was ill treated on demand of dowry held the accused-husband not guilty and acquitted him under Section 232 Cr.P.C.

8. It is stated at the Bar that such judgment has attained finality.

9. Learned counsel for the petitioner-Mr. Vivekanand Jena, relying on the acquittal of the co-accused seeks for quashing for the cognizance and the trial pending in the Court of the Learned Sessions Judge, Balasore relating to the petitioner relying on the judgment of this Court reported in

2016 (I) ILR – CUT-491 in the case of ***Satyaban Pradhan @ Kuna Pradhan Vrs. State of Odisha.***

10. Per contra, the learned counsel for the State refuted such submissions inter alia on the count that the acquittal in respect of a co-accused cannot be taken advantage by the petitioner, who has not faced trial and seeks dismissal of the CRLMC.

11. Duty cast on Court while evaluating the order of acquittal vis-à-vis a co-accused, who has been acquitted while applying the same to an accused who has not faced trial has been succinctly stated by the Apex Court in the case of ***Yanob Sheikh alias Gagu versus State of West Bengal*** reported in ***(2013) 6 SCC 428***

Which is quoted hereunder for convenience for ready reference;

“ 24. xxx xxx xxx xxx

It is only where the entire case of the prosecution suffers from infirmities, discrepancies and where the prosecution is not able to establish its case, the acquittal of the co-accused would be of some relevancy for deciding the case of the other
”.

and in Para-26 it has been held thus;

“ 26. xxx xxx xxx xxx

The Court has to screen the entire evidence and does not extend the threat of falsity to universal acquittal. The court must examine the entire prosecution evidence in its correct perspective before it can conclude the effect of acquittal of one accused on the other in the facts and circumstances of a given case”.

12. The case at hand has to be examined on the touch stone of the principles laid down in the above case that the evidence on record has to be examined before the co-accused who is seeking interference on account of acquittal can be granted relief at par with an accused who faced trial and was acquitted. At the cost of reiteration, it is stated that in the present case after investigation the final form was submitted, for insufficient evidence.

13. On evaluation of materials in the trial relating to the co-accused, i.e., the husband, keeping in view the statement of P.W.1 the informant who is none other than the brother of the deceased, absolving the husband who faced trial of any criminality, order of acquittal was recorded.

14. Hence, this Court finds force in the submission of the learned counsel for the petitioner that, no useful purpose would be served in allowing the criminal proceeding to continue and putting the petitioner who is the sister-in-law of the deceased

through the rigours of trial after more than a decade of the judgment of acquittal passed in respect of the husband, who can be said to be the principal accused, in a case of the present nature.

15. In this context, reference can also be made to the judgment of this Court in the cases of *Kanhu Behera Versus State of Orissa* reported in 2005 (II) OLR-386 and of *Surender Kumar @ Surendra Routray Vrs. State of Odisha* reported in 2011 (I) OLR 1052, whose facts are more or less akin to the case at hand.

16. In fact, in the factual matrix of the case at hand, it can be stated that the petitioner is even on a better footing since the Investigating Agency did not file any charge-sheet against her.

17. Taking note of the judgment relied upon by the learned counsel for the petitioner and the judgments of this Court cited above and the law laid down by the Apex Court setting out the contour of consideration of an acquittal of a co-accused to enure to the benefits of an accused who has not faced trial, this Court is of the considered view that the continuance of the Criminal Proceeding against the present petitioner, who is the sister-in-law of the deceased and directing her to face trial after more than a decade of judgment of acquittal would be an exercise in futility. More so, when there is bleak possibility of

any conviction. This Court is of the considered opinion that ends of justice would be sub-served if order of cognizance dt. 06.02.1996 (Annexure-3) passed by the Learned J.M.F.C., Soro in G.R. Case No. 29 of 1996 and the consequent impending trial qua the petitioner is not allowed to linger any further.

18. Accordingly, the order of cognizance dtd. 06.02.1996 passed by Learned J.M.F.C., Soro in G.R. Case No. 29 of 1996 (Annexure-3) and the proceeding pending in the Court of the learned Sessions Judge, Balasore in S.T. No. 99 of 2021 is hereby quashed vis-à-vis the petitioner.

19. The CRLMC is accordingly allowed.

(*V.Narasingh*)
Judge

Orissa High Court, Cuttack,
Dated the 21st March, 2022/Balaram