

ORISSA HIGH COURT: CUTTACK

CRLREV No. 879 of 2014

(An application under section 397 and 401 of the Code of Criminal Procedure, 1973 challenging the order dated 25.09.2014 passed by the 2nd Addl. Sessions Judge, Cuttack in S.T. Case No. 435 of 2013)

Shantanu @ Priyabrata Senapati Petitioner

-Versus-

State of Orissa Opp. Party

Advocate(s) appeared in this case :-

For Petitioner	:	Mr. S.S. Das, Sr. Advocate along with M/s. Suman Modi, P.K. Ghosh, S.S. Pradhan, M. Pattnaik & S. Pradhan, Advocates
For Opp.Party	:	Mr. A. Pradhan, Addl. Standing Counsel.

**CORAM
JUSTICE SASHIKANTA MISHRA**

**JUDGMENT
8th March, 2022**

SASHIKANTA MISHRA, J. The petitioner in the present revision seeks to challenge the order dated 25.09.2014

passed by learned 2nd Addl. Sessions Judge, Cuttack in S.T. Case No. 435 of 2013 whereby, his application filed for discharge from the offences under Section 493, 417 and 306 IPC was rejected.

2. The brief facts of the case are that on 04.09.2012 an FIR was lodged by one Rajalaxmi Mohapatra before the IIC, Mahila Police Station, Cuttack alleging that her daughter, namely, Pratikhya Priyadarsini Biswal (Pinki), the deceased, was living with one Nihar Ranjan Pradhan (Pintu) since 2006. Both of them were committing crime and had been jailed on some occasions. The present petitioner happens to be the advocate of Nihar and the deceased. It is alleged that taking advantage of the imprisonment of Nihar, the petitioner secretly married the deceased and kept her as his wife in a house at C.D.A., Sector-11 on rent. It is further alleged that the deceased insisted that the said marriage should be solemnized as per Hindu rites and customs, but the petitioner had though assured to do so, yet fell back from his word, as a result of which, the

deceased committed suicide. Basing on such FIR, Mahila P.S. Case No.146 of 2012 was registered under Sections 493/417/306 of IPC. Upon completion of investigation, however, charge sheet was submitted under Sections 493/417/406/306 of IPC and cognizance was taken of the said offences. The case was thereafter committed to the Court of Session for trial and is pending in the Court learned 2nd Addl. Sessions Judge, Cuttack.

3. On 25.09.2013, the petitioner-accused filed an application under Section 227 of Cr.P.C. in the Court below with prayer to discharge him from the offences mainly on the ground that the essential ingredients of the same do not exist. The learned Court below after taking into consideration the settled position of law and the allegations made in the FIR held that in so far as the offence under Section 406 of IPC is concerned, there is absolutely no material on record to proceed against the accused and accordingly discharged him from the said offence. However, it was held that the materials on record, prima facie, satisfy the allegations against the

accused under Section 493/417/306 of IPC. The said order is impugned in the present revision.

4. Heard Mr. S.S. Das, learned Senior Counsel for the petitioner and Mr. A. Pradhan, learned Addl. Standing Counsel for the State.

5. Mr. S.S. Pradhan, learned Sr. Counsel would argue that criminal prosecution being a serious matter affecting the liberty of a person, can be allowed to proceed only if there are sufficient materials on record justifying the same. Referring to the allegations made in the FIR and the statements of the witnesses recorded under Section 161 Cr.P.C., it is submitted by Mr. Das that the prosecution case, even if accepted on its face value, does not in any manner establish the offences alleged. Referring to the decision of the Hon'ble Supreme Court in the case of ***Union of India vs. Prafulla Kumar Samal and others***, reported in (1979) 3 SCC 4, it is contended by Mr. Das that the Court while framing charge under Section 227 of Cr.P.C. must find out whether or not prima face case against accused had been

made out and whether such materials disclose grave suspicion against the accused, which had not been properly explained. According to Mr. Das, mere suspicion cannot justify continuance of a criminal proceeding.

6. Per contra, Mr. A. Pradhan has submitted that facts of the present case clearly reveal that there are sufficient materials before the Court to presume that the offences under Sections 493/417/306 of IPC were committed by the accused and therefore, there is no illegality in the impugned order.

7. A brief reference to the relevant position of law would be apposite at the outset. In the case of ***Prafulla Kumar Samal*** (supra) referred to by learned senior Counsel, the apex Court held as under:

“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.”

Therefore, at the stage of framing charge, duty is cast upon the Court to look at the evidence placed before it to see whether or not there is sufficient ground to proceed against the accused.

8. In the case of ***State of Bihar vs. Ramesh Singh***, reported in (1977) Cri.L.J. 1606, the Apex Court held that the suspicion that the accused has committed an offence must not be simple but grave. In other words, there must be a grave suspicion as against mere suspicion before the Court can frame charge against the accused.

9. In the case of ***Dilawar Balu Kurane vs. State of Maharashtra***, reported in (2002) 2 SCC 135, it was held that 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; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Cr.P.C. and for such purpose he has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before him without making a roving enquiry into the pros and cons of the matter.

10. From the above narration it is evident that only a grave suspicion can justify framing of charge against an accused. To further explain, suspicion per se may be entirely in the realm of speculation or imagination and may also be without any basis, whereas grave suspicion is something which arises on the basis of some acceptable material or evidence. Only because there is no other explanation for the alleged occurrence, the needle of suspicion should point at the accused cannot

be a reasonable basis to proceed with the trial against him. But to do so, there must be some nexus or link between him and the occurrence which is *ex facie* available to be seen or inferred from the materials placed before the Court. Only then will the statutory requirement of “sufficient ground” as per Section 227 Cr.P.C. be said to have been satisfied.

11. The facts of the case now need to be viewed in the light of aforementioned legal propositions. A reading of the FIR and the statement of the witnesses recorded under Section 161 Cr.P.C. do not even remotely suggest the commission of offence under Section 493 IPC. On the contrary, it is the admitted case that the petitioner and the deceased had secretly married and were residing together in a rented house. Therefore, the question of accused deceitfully inducing a belief of lawful marriage on the deceased for cohabitation does not arise.

12. As regards the offence under Section 417 of Cr.P.C., the only allegation is that the accused cheated the deceased by not marrying her despite promising to do

so. As has already been narrated hereinbefore, the petitioner and the deceased had already married secretly but the deceased wanted their marriage to be solemnized as per Hindu rites and customs. It is otherwise borne out from the materials on record that in deference to such desire of the deceased, the accused had made arrangements to solemnize their marriage at Sri Ramanigameswar Temple at Chahata, Cuttack. It is significant to note that such marriage was supposed to take place on 02.09.2012, but for some reason the same did not happen. The deceased committed suicide on the next date. It is not forthcoming from the materials on record as to why the marriage did not take place on 02.09.2012. There is simply no material to suggest that the marriage was called off at the instance of the accused or that he refused to marry the deceased despite having made arrangements for the marriage to be solemnized on 02.09.2012. So, this much alone cannot persuade the Court to presume that the accused had any fraudulent intention to cheat the deceased.

13. Coming to the offence under Section 306 of IPC, it is argued by learned Senior Counsel that the basic ingredient thereof i.e. of abetment within the meaning of Section 107 of IPC is not made out at all inasmuch as, there is neither a suicide note written by the deceased blaming the accused for her death nor there is an oral dying declaration recorded by any person, whereby, she blamed the accused. The allegation according to Mr. Das appears to be omnibus in nature and not based on any material at all. Mr. A. Pradhan, learned Addl. Standing Counsel on the other hand would contend that since the accused went back on his promise to have their marriage solemnized in the temple, the deceased became depressed to such extent as to commit suicide. In the FIR it is simply alleged that as the accused did not marry the deceased, she did not wish to live any further and therefore, committed suicide. It is obviously a bald allegation without reference to any specific incident or happening. In the statement of the informant recorded under Section 161 Cr.P.C. it is also alleged that the

accused refused to marry the deceased, for which she committed suicide being unable to bear her mental agony. The aunt of the deceased has also given a similar statement but the same appears to be based on the information she received from the informant. Similar is the statement given by the younger brother of the deceased. No other witnesses have stated anything in this regard excepting for their knowledge that the deceased had committed suicide.

14. On the above evidence, the question that the Court would pose for determination is whether it is sufficient to presume that the accused had abetted commission of suicide by the deceased. Fact remains that both of them had already been secretly married but the deceased is said to have insisted for solemnization of marriage as per Hindu rites and customs. The deceased, it must be kept in mind, was 26 years old at the relevant time and such secret marriage with the accused was subsequent to a live-in relationship she had with Nihar Ranjan Pradhan since 2006. The marriage was to take

place on 2nd September, 2012, but for some reason it did not happen on that date and the deceased committed suicide on 3rd September, 2012. As already been discussed, there was neither any suicide note nor any dying declaration nor even any statement made by the deceased before anybody prior to committing suicide making any allegation against the accused or expressing that she was depressed because of non-solemnization of the proposed marriage. So it becomes rather far-fetched, particularly in the absence of any acceptable material to hold that only because the proposed marriage could not be solemnized on the date fixed, it caused such mental imbalance in the deceased that led her to commit suicide. Thus, while there is no material showing any positive act having been committed by the accused, the allegation against him is one of omission as noted above. But then, even assuming for the sake of argument that the deceased had lost her mental balance or became mentally depressed because their marriage could not take place on the date fixed, the question is, whether the same can be

treated as abetment within the meaning of Section 107 of IPC.

15. Section 107 of IPC reads as follows:

“107. Abetment of a thing.—A person abets the doing of a thing, who—

*First— Instigates any person to do that thing; or
Secondly—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or*

Thirdly— Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.”

In the case of **Chitresh Kumar Chopra vs. State (Govt. of NCT of Delhi)**, reported in (2009) 16 SCC 605 as well in the case of **Parveen Pradhan vs. State of Uttarakhand**, reported in (2013) 1 SCC (Cri) 146, the apex Court held that to constitute ‘instigation’, a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by ‘goadings’ or ‘urging forward’.

16. In the instant case, there is nothing on record to show that the accused had instigated the

deceased either by his words or actions so as to lead her to commit suicide. Nothing has been placed on record as to the reasons for the marriage not taking place on the date fixed despite arrangements having been made therefor. Whether the marriage was not held only because the accused refused to marry the deceased is simply not forthcoming from the materials on record, rather the informant appears to have simply presumed that the accused refused to marry her daughter and because of such reason she committed suicide. As already stated, there being no reasonable basis for such presumption nor suspicion, the accused cannot be made to suffer the ignominy of undergoing the criminal trial, that too, for a sessions triable offence. In other words, the prosecution case read as a whole does not justify a trial of the accused for the alleged offences.

17. For the foregoing reasons therefore, this Court has no hesitation in holding that the impugned order in so far as it relates to not discharging the accused from the offences under Sections 493/417/306 of IPC

cannot be sustained. Consequently, the Revision is allowed. The impugned order is set aside. The accused-petitioner be discharged from the offences under Section 493/417/306 of IPC.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 8th March, 2021/ A.K. Rana