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HIGH COURT OF ORISSA: CUTTACK

BLAPL No.5701 OF 2020

(In the matter of an application under Section 439 of the Criminal Procedure Code, 1973)

Dipak Bhutia

...

Petitioner

Versus

State of Odisha

...

Opposite Party

For Petitioner

: Mr. Dharanidhar Nayak, Senior Advocate and M/s. S.K. Das, B.K. Das, B. Mishra and J. Mitra, Advocates

For Opposite Party

: Mr. Karunakar Nayak Additional Standing Counsel
: Miss. Rajalaxmi Biswal and P. Jena, Advocates
(For the Informant)

PRESENT

THE HONOURABLE SHRI JUSTICE S.K. PANIGRAHI

Date of Hearing: 21.01.2021

Date of judgment: 05.02.2021

1. The petitioner has filed the instant application under Section 439 of CrPC seeking bail in connection with Dhenkanal Tumusingha P.S. Case No.77 of 2020 corresponding to G.R. Case No. 316 of 2020 pending before the court of the learned S.D.J.M., Kamakhyanagar. The petitioner herein is the accused in connection with the alleged commission of offences punishable under Sections 498-A, 294, 323, 307, 506, 34 of I.P.C.

2. The case of the prosecution is that the complainant got married to the present petitioner on 20.02.2015 as per cast and customary practices. At the time of marriage, the complainant's father had given Rs.5 lakhs and gold ornaments of about 200 gms. (20 bhari) and other household items in the form of dowry. After two years of marriage, she was subjected to cruelty seeking demand for more dowry of Rs.10 lakhs and threatened to burn her alive in case of refusal of the same. The village gentry have tried to resolve the dispute between them on many occasions.

3. Pursuant to consistent demand and cruelty meted out to the daughter, the complainant's father has given further Rs. 2-4 lakhs over a few instalments. The complainant has also emphasised that the matter has been resolved in the Tumusingha P.S. wherein the petitioner and his family members have admitted their fault and has promised not to repeat similar mistake again in future.

4. It is further alleged that on 06.06.2020 at about 11 P.M. the petitioner along with mother-in-law and sister-in-law of the informant-victim abused her and assaulted with her with a sharp wood threatening to take her life. Her mother-in-law and sister-in-law applied 'baidanka' (plant with poisonous spores) to her private part which is heinous and inhuman. Subsequently, the petitioner poured kerosene on her and set her to fire. However, she threw the burning apparels and fled from the spot and somehow saved herself.

Thereafter, the complainant lodged the FIR in the Tumusingha Police Station.

5. Heard Mr. Dharanidhar Nayak, learned Senior Counsel appearing for the petitioner, learned Additional Standing Counsel and Miss. Rajalaxmi Biswal, learned counsel for the Informant and perused the case records.

6. Learned Senior Counsel for the petitioner Mr. Nayak, has submitted that the petitioner has been falsely implicated in the case and the prosecution has failed to establish a prima facie case against the petitioner. The allegations as set out in the FIR are omnibus in nature and there is absolutely no allegation of any specific overt act against the present petitioner. Further, on perusal of the FIR and the statement of the victim, it can be seen that both are contradictory and apart from that offence under Section 307 of I.P.C may not be made out against the petitioner, as no injury in the vital parts of the body of the victim and all the injuries including burn injury are simple in nature. Apart from that, though there is allegation of setting fire to her body by pouring kerosene, but no burnt clothes are seized by the Police and thus the FIR is concocted. Further, the learned counsel has alleged that the complainant is a psychiatric patient, which was mentioned when the village gentlemen settled a dispute with a condition that she will go to a doctor for treatment. Therefore, the allegations in the FIR are completely false and fabricated. Hence, the petitioner may be granted bail.

7. The Investigating Officer has submitted the Case Diary along with the injury report of the complainant. The injury report shows:

- i. Burn injury of size 1, burn 2x1 cm², right snuff box area dorsal thumb, caused by fire.
- ii. Incision- 1x0.1x0.1 cm 3-left thumb ventral region-simple, caused by knife.
- iii. Trauma and pain over right upper deltoid region and right zygomatic region due to hit by blunt object - nature of injury-simple.
- iv. Inching wound of snuffle size on perineal region due to application of poisonous spore.

The injury report further fortifies the allegations in the FIR. The document produced by the petitioner also shows that on 25.05.2020 there was settlement between the complainant and the petitioner at Tumusingha P.S. and show cases that the petitioner and his family members subjected the complainant to cruelty within 10 days of settlement.

8. In the case of **Neeraj Subhash Mehta Vs. The State of Maharashtra**¹, the Bombay High Court relied on **Shobha Rani v. Medhukar Reddi**² and **Noorjahan v. State**³ and provided an explanation of cruelty.

“10. By catena of judgments of this court as well as Apex Court what amounts to cruelty as envisaged by Explanation to Section 498A of IPC is explained. Cruelty

¹(Criminal Application No. 1213 of 2016 in Criminal Appeal No. 555 of 2016).

²1988 SCR(1) 1010.

³[(2008) 11 SCC 55].

implies harsh and harmful conduct with certain intensity and persistence. It covers acts causing both physical and mental agony and torture or tyranny and harm as well as unending accusations and recrimination reflecting bitterness putting the victim thereof to intense miscarries....A wilful conduct of such a nature as is likely to propel or compel a married woman to commit suicide or to cause grave injury or danger to her life, limb or health is required to be established.”

9. In **V. Bhagat v. Mrs. D. Bhagat**⁴, the Supreme Court, while dealing with the issue of cruelty in the context of Section 13 of the Hindu Marriage Act, observed as under:

“17. ...It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.... The context and the set up in which the word ‘cruelty’ has been used in the section seems to us, that intention is not necessary element in cruelty. That word has to be understood in the ordinary sense of the term in

⁴AIR1994SC710.

matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty.”

10. In **Manju Ram Kalita vs. State of Assam**⁵, the Supreme Court held that -

“22. "Cruelty" for the purpose of Section 498A I.P.C. is to be established in the context of Section 498A IPC as it may be a different from other statutory provisions. It is to be determined /inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint.”

11. In the case of **Somnath Bharti vs State**⁶, the Delhi High Court rejected the bail application stating the gravity of the allegations against the petitioner and relied on the following ratio:

*“42. In case of **Preeti Gupta and Another Vs. State of Jharkhand and Another**⁷, the Supreme Court held that the ultimate object of the justice is to find out the truth and punish the guilty and protect the innocent. The tendency of implicating husband and all his immediate*

⁵(2009) 13 SCC 330.

⁶BAIL APPLN. 1952/2015 & CrI.M.(Bail).No.7749/2015.

⁷(2010) 7 SCC 667.

relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have 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 the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful. Therefore, it is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law.”

12. In the instant case, the investigation is still going on. From perusal of the FIR, it appears that offences under the Indian Penal Code, are prima facie definitely made out, though it requires thorough trial. A perusal of the FIR and charge sheet filed in the present case shows that there are very specific allegations against each of the family members of the petitioner who are arrayed as

accused. It is not as if the allegations are casual and sweeping against all the accused generally.

13. There are numerous other allegations as well in the charge-sheet which are very detailed and need not be reproduced since the above extracts are sufficient to indicate that the allegations are specific and not of a general nature. Upon reading of the FIR and the charge-sheet as a whole, it is not possible to come to the conclusion that they do not make out even a prima facie case against the petitioner for the offences in question. While it is true that even the distant relatives of the husband have been roped in, this must be viewed in the context of the fact that the extended family does live in villages within Odisha and the prevalent social milieu and that setting does facilitate their constant interaction. Moreover, the allegations are specific qua each of them. The length of detention of the petitioner is not a ground for release him on bail in this kind of offence which shakes the social fabrics. Even the allegation of psychological illness of the complainant-victim does not give the petitioner and his family members the handle to treat her like slave bereft of any mercy and human compassion. Therefore, I am not inclined to enlarge the petitioner on bail.

14. In view of the above, this Bail Application is accordingly dismissed. However, the petitioner will be at liberty to raise all the points, already raised in this petition, at the time of framing of the

charge, which will be considered by the trial court concerned by passing a reasoned order. It is further made clear that any of the observations made in this judgment shall not come in the way of a fair trial of the case, nor shall the trial Court be influenced by these observations.

[S.K. PANIGRAHI, J.]