

**A.F.R.**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLMC No.410 of 2020**

(In the matter of an appeal under Section 482 of the Code of Criminal Procedure).

***Biswaroopa Pati @ Mohanty* .... *Petitioner***

**-versus-**

***State of Odisha & another* ... *Opposite parties***

***For Petitioner* : *Mr. G. Mishra, Sr. Advocate***

***For Opposite Parties* : *Mr. S.S.Pradhan, AGA for O.P. No.1*  
*Mr.B.Pujari, Advocate for O.P. No.2***

**CORAM:**

**JUSTICE G. SATAPATHY**

**DATE OF ARGUMENT: 03.05.2023**

**DATE OF JUDGMENT: 01.06.2023**

**G. Satapathy, J.**

**1.** By way of this application U/S. 482 of Cr.P.C. the petitioner seeks to quash the criminal proceeding instituted against her in G.R. Case No. 1818 of 2018 arising out of Cuttack Mahila P.S. Case No. 93 of 2018 pending in the file of learned S.D.J.M.(Sadar),

Cuttack on the grounds inter alia some omnibus and unspecific allegations have been made against her.

**2.** The facts in background are that the petitioner being the elder sister of the groom is the sister-in-law of informant-bride and on 30.06.2017 the informant bride got married to the younger brother of the petitioner, but it was alleged by the informant that she was subjected to various mental and physical torture by her husband and other in-laws for demand of more dowry. Accordingly, the bride had lodged an FIR against her husband and in-laws including the petitioner before the IIC, Cuttack Mahila P.S. for commission of offence punishable U/Ss. 498-A/294/506/34 of IPC read with Section 4 of D.P. Act which was registered vide Cuttack Mahila P.s. Case No. 93 dated 25.09.2018 and the matter was investigated into resulting in submission of charge sheet against the petitioner and others for the aforesaid offences

under which cognizance was taken by the learned S.D.J.M.(Sadar), Cuttack.

Feeling aggrieved with the order taking cognizance of offences, the petitioner has approached this Court in an application U/S. 482 of Cr.P.C. seeking to quash the criminal proceeding instituted against her on the grounds inter alia that no offence is made out against her and there is only some omnibus/general and unspecific allegations have been made by the informant against her.

3. In the course of hearing of CRLMC, Mr.Goutam Mishra, learned Senior Counsel for the petitioner has submitted the petitioner is the married younger sister-in-law of the informant who has made some reckless and vague allegations against her to rope the present petitioner in this case along with husband and in-laws. It is pointed out by the learned Senior Counsel that there is in fact no allegation appearing against the petitioner in the F.I.R. except some

casual reference to her name and there is a long delay in lodging of F.I.R. and there are some bald and omnibus allegations which are unspecific have been stated to be mentioned in the F.I.R. and a bare perusal of the statement of the informant and other witnesses would further unveil only omnibus allegations against the present petitioner who being a married lady resides in a separate mess than that of her parental home. It is, accordingly, submitted by the learned Senior Counsel that the present proceeding against the petitioner is nothing but an abuse of process of Court and the same may kindly be quashed. In order to buttress his submissions, learned Senior Counsel has cited the authorities in **(i) Kahkashan Kausar @ Sonam and Others vs. State of Bihar and Others; (2022) 6 SCC 599,** **(ii) Preeti Gupta and Another vs. State of Jharkhand and Another; (2010) 7 SCC 667 and**

***(iii) Seenivasan vs. State and Another; (2019) 8 SCC 642.***

4. Mr. S.S. Pradhan, learned A.G.A. has submitted that there is not only prima facie allegations against the petitioner, but also the allegations appearing against her is specific for commission of offences whereunder cognizance of the offences has already been taken by the learned S.D.J.M. (S), Cuttack. It is further submitted that when a criminal case is sought to be quashed at initial stage, it has to be demonstrated on a conspectus of record that the uncontroverted allegations made in the F.I.R. and the evidence collected in support of the same do not disclose commission of any offence or make out the case against the accused and in case the allegations made in the F.I.R. or complaint taken at their face value and accepted in entirety do not prima facie constitute any case against the accused, it would be in the realm of the High Court to quash such criminal

proceeding, but when the case at hand discloses strong prima facie case against the petitioner, the criminal proceeding cannot and ought not to be quashed by merely terming it as to have been brought on some omnibus and general allegations. Learned A.G.A. accordingly has prayed to dismiss the CRLMC.

5. Mr. Basudev Pujari, learned counsel appearing for O.P. No. 02 has submitted that the submission of charge sheet itself is indicative of prima facie case against the petitioner for commission of offences and there is specific allegations made against the present petitioner by the informant in her F.I.R. and the same has been substantiated not only by her statement U/S. 161 of Cr.P.C., but also by the statement of her parents and other witnesses. It is further submitted that, the present petitioner has played a definite pivotal role in the marital dispute of the informant and her husband and she was instrumental in driving

out the informant from her matrimonial house. Mr. Pujari, learned counsel for O.P. No. 02 has also relied upon the decisions in **Rajeev Kourav vs. Baisahab and Others; (2020) 3 SCC 317** to contend that assessing the statement of witness U/S. 161 of Cr.P.C. to quash the criminal proceeding is impermissible in the eye of law and it would be highly improper to appreciate contradictions/inconsistencies in the statement of witnesses at the stage of 482 Cr.P.C. In summing up his argument, learned counsel for O.P. No. 02 has prayed to dismiss the CRLMC by relying upon another decision in **Md. Allauddin Khan Vrs. the State of Bihar & others** in Criminal Appeal No. 675 of 2019 (Arising out of S.L.P.(Crl.) No. 1151 of 2018 disposed of on 15.04.2019).

6. Admittedly, the petitioner is the sister-in-law of the informant and she has approached this Court to quash the criminal proceeding against her on the grounds *inter-alia* that some general and omnibus

allegations have been alleged against her by the informant. It is, however, clear that the offence of dowry torture U/S. 498-A of IPC has often been misused against the in-laws to pressurize the family of the husband and there is a tendency of over implication of relatives of the husband who often reside in separate mess or even at a distant place than the matrimonial home of the bride. In such situation, the Court has onerous duty to check the over implication of the relatives of a husband. It is also true that there are some genuine cases of dowry torture in which the mother-in-law and sister-in-law play vital role, apart from the errant husband and other in-laws and the Court has to be very careful while dealing with matter concerning matrimonial disputes between husband and wife to separate genuine case from cases of over implication and vexatious cases. Section 498-A of IPC was enacted to ensure to prevent a married woman from harassment



and cruelty at the hands of husband or relatives of husband of such woman, but it is a matter of great concern that a large number of cases continued to be filed U/S. 498-A of IPC alleging harassment of married woman and often such complaints are made/filed in the heat of passion over trivial issues and even many such complaints are not bonafide, however, some cases are genuine cases of dowry torture.

7. On proceeding to appreciate the rival submissions, this Court now falls back upon the allegation leveled against the petitioner in the FIR which on plain perusal discloses some allegation against the petitioner such as "she and her father forced the father of the informant to arrange the marriage at Pramod Resort at Cuttack" and "she and her mother expressed anguish on the informant for failure to bring more gold ornaments and not agreeing to keep her gold ornaments in the locker of her mother-in-

law” and “they used to inflict mental torture on her” and “her husband and her younger sister-in-law had been scolding her very often”. In concluding part of the FIR, the informant has alleged that since her husband, sister-in-law(petitioner) and mother-in-law had been torturing her using filthy language to get valuable property from her parents and depriving her from her conjugal life, she lodged the FIR. The informant has also stated that they had agreed for the marriage without any dowry. The statement of the informant also contains more or less the same allegation as stated in the FIR. The statement of the father of the informant also reveals that he was compelled to arrange marriage at Pramod Resort on the pressure of the petitioner and the petitioner and her mother were looking down upon the informant which is also the allegation as found in the statement of the mother of the informant.

8. In the course of argument, learned counsel for O.P. No.2 has relied upon the decision in **Rajeev Kourav(supra)** to contend that appreciation of statement of witnesses in a proceeding U/S. 482 of Cr.P.C. is impermissible and this Court is also conscious of such principle as laid down by Apex Court, but when the material allegations brought against an accused in statement of witness and FIR do not disclose commission of any offence, it is not legally tenable to prosecute such accused against whom there is no credible or reliable allegations leveled. On the other hand, the decision relied on by the petitioner in **Kahkashan Kausar @ Sonam(supra)**, the Apex Court upon noticing absence of specific and distinct allegations against the appellants has allowed the application to quash the FIR against the appellants. In quashing the FIR, the Apex Court in the aforesaid decision has further held at paragraph-18 as under:-

" Coming to the facts of this case, upon a perusal of the contents of the FIR dated 01.04.19, it is revealed that general allegations are levelled against the Appellants. The complainant alleged that "all accused harassed her mentally and threatened her of terminating her pregnancy". Furthermore, no specific and distinct allegations have been made against either of the Appellants herein, i.e., none of the Appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are therefore general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High court, we have not examined the veracity of allegations made against him. However, as far as the Appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution".

9. In this case, of course, an affidavit has been filed by O.P. No.2 to indicate that the petitioner is not residing in separate mess, but she very often

resides/remains in the house of her father Nrushingha Charan Pati with the other accused persons, but how far such an affidavit would be relevant in this case is never understood since a married woman normally resides in her matrimonial home unless she has got some matrimonial disputes with her in-laws and in this case, there is hardly any allegation against the petitioner for having any dispute with her in-laws. Besides, the decision in **Md. Allauddin Khan(supra)** has been relied upon by O.P. No.2, but the same being for offences punishable U/Ss. 323/379/34 of IPC is not applicable to the present situation wherein the petitioner has sought for quashing of complaint on the ground of omnibus and general allegations made against her by relying upon the decision in **Kahkashan Kausar @ Sonam(supra)**.

10. A perusal of the allegations made against the petitioner on record, this Court does not find any

specific allegation against the petitioner, rather all the allegations made against the petitioner as narrated in the preceding paragraph are nothing sort of some omnibus and unspecific allegations leveled against her and thereby, the principle as laid down by Apex Court in ***Kahkashan Kausar @ Sonam(supra)***, would enure to the benefit of the petitioner.

11. In view of the discussions made hereinabove and taking into consideration the law laid down by the Apex Court in ***Kahkashan Kausar @ Sonam(supra)*** and there being some omnibus and unspecific allegations leveled against the petitioner who is the married sister-in-law of the informant, this Court does not find any justifiable reason to summon the petitioner to face the proceeding in the aforesaid case and the criminal proceeding, thereby, is nothing but an abuse of process of Court and to secure the ends of justice, the criminal proceeding against the petitioner is required to be quashed. It is, however,

made clear that the criminal proceeding against rest of the accused persons having being not challenged and the learned Senior Counsel in the course of argument has clearly submitted to have no objection if the criminal proceeding continues against the rest of the accused persons, the criminal proceeding may continue against the rest of the accused persons.

12. In the result, the CRLMC stands allowed on contest, but in the circumstance there is no order as to costs. The criminal proceeding against the petitioner in G.R. Case No. 1818 of 2018 arising out of Cuttack Mahila P.S. Case No. 93 of 2018 pending in the file of learned S.D.J.M.(Sadar), Cuttack is hereby quashed.

**(G. Satapathy)**  
**Judge**

*Orissa High Court, Cuttack,  
Dated the 1<sup>st</sup> day of June, 2023/Kishore*