

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.763 of 2014

Leeleswari Sahu

.... Petitioner
Mr. S.C. Sahoo, Advocate

-Versus-

State of Odisha and another

.... Opposite Parties
Mr. P.K. Muduli, AGA

CORAM:
JUSTICE R.K. PATTANAİK

ORDER
22.07.2022

Order No.

04.

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. This is an application under Section 482 Cr.P.C. filed at the instance of the petitioner for quashing of F.I.R. (Annexure-1) and the proceeding in C.T. Case No.26 of 2014 on the grounds stated therein.
3. In fact, an F.I.R. was lodged by the informant whereupon Jonk P.S. Case No.8 of 2014 was registered for offences punishable under Sections 498-A/494/309 read with Section 34 IPC. The informant alleged that her husband who is accused No.1 accepted the second wife, namely, the petitioner and both of them tortured her mentally and physically and during that time, her husband consumed poison on 9th January, 2014, as a result of which, he was admitted in the hospital for treatment though was subsequently discharged. With the above allegation, the F.I.R. was lodged and the case was registered both against the petitioner as well as the informant's husband.

4. Learned counsel for the petitioner submits that even considering the allegations in the F.I.R., no prima facie case is made out. It is further submitted that the petitioner being the second wife cannot be held responsible for the alleged offences in the peculiar facts and circumstances of the case. In response to the above, Mr. Muduli, learned AGA submits that the petitioner was accepted as second wife which is revealed from the statement of the complaint under Section 161 Cr.P.C. and that latter was then subjected to mental and physical torture and therefore, a case under Section 498-A is definitely made out. However, it is fairly conceded that the other two offences under Sections 494 and 309 IPC do not appear to have been made out even accepting the allegations made in the F.I.R. at its face value.

5. Regard being had to the nature of allegations, it is made to understand that the complainant is the wife of the other accused, who alleged to have married the petitioner during the subsistence of the first marriage and also consumed poison on 9th January, 2014. However, a proper reading of the F.I.R., it would appear that the petitioner may be tried for the offence under Section 498-A IPC and in so far as the other two offences under Sections 494 and 309 IPC are concerned, the same are not attracted at all. The prosecution under Section 494 IPC since cognizable against the husband of the complainant, the petitioner, cannot be proceeded with even if it is assumed that she contracted a second marriage. As to the other offence under Section 309 IPC, the accused husband of the complainant rather consumed poison as is evident from the F.I.R. and hence, for that also, the petitioner cannot be prosecuted.

6. Thus having considered the materials on record and the submissions of learned counsel for the parties, the Court is of the view that except offence under Section 498-A IPC, the other offences cannot

be attracted to criminally prosecute the petitioner and accordingly, it is ordered.

7. In the result, CRLMC stands partly allowed. Consequently, the proceeding in C.T. Case No.26 of 2014 pending in the court of learned S.D.J.M., Nuapada is to proceed against the petitioner only for the offence punishable under Section 498-A IPC. As a necessary corollary, the case under Sections 494 and 309 IPC is hereby quashed vis-à-vis the petitioner.

(R.K. Pattanaik)
Judge

KC Bisoi

