

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.54 of 2022

Shaikh Kasim Alli @ Sk. Kasim Alli* *Petitioner

Mr. S.K. Zafrulla, Advocate

-versus-

***1. State of Odisha
2. Habiba Begum
3. Sk. Kasimuddin
4. Inspector in-charge,
Bhograi police station,
Balasore***

Opp. Parties

*Mr. Rajesh Tripathy
Addl. Standing Counsel*

**CORAM:
JUSTICE S.K. SAHOO**

ORDER

19.07.2022

Order No.

01. This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner Shaikh Kasim Alli @ Sk. Kasim Alli is the husband of the opposite party no.2 Habiba Begum and opposite party no.3 Sk. Kasimuddin is the brother-in-law of the opposite party no.2. The petitioner filed a petition under section 97 of Cr.P.C. in the Court of learned J.M.F.C., Jaleswar which was

registered as Misc. Case No.26 of 2021 making the opposite parties nos.2, 3 and 4 as opposite parties with a prayer to issue search warrant to the Inspector in-charge of Bhograi police station to search for the opposite party no.2, who is stated to have been illegally confined by the opposite party no.3 in his house and to produce her in the Court and to give her in the zima of the petitioner.

The said petition was rejected as per the impugned order dated 15.07.2021. The learned J.M.F.C., Jaleswar has been pleased to hold that the petitioner filed a criminal case vide C.T. Case No.51 of 2021 for commission of offences under sections 147/148/294/323/457/380/406/403/420/506/149 of the Indian Penal Code against the opposite parties nos.2 and 3 and in the said case, on completion of investigation, the Investigating Officer submitted final report and it was found by the Investigating Officer that due to family matter, since the petitioner tortured his wife (opposite party no.2), she left the house of the petitioner and the petitioner filed the case to save himself from any future legal clutches. The learned J.M.F.C., Jaleswar further held that though a protest petition has been filed by the petitioner to such final report but the same is to be decided as per law but he found no material on record that the opposite party no.2, the wife of the petitioner has been wrongfully

confined by her brother-in-law (opposite party no.3) and accordingly, rejected the petition under section 97 of Cr.P.C. filed by the petitioner.

Mr. S.K. Zafrulla, learned counsel appearing for the petitioner contended that when notices were issued to the opposite parties in Misc. Case No.26 of 2021, it was held to be sufficient, however, the wife of the petitioner did not enter her appearance and the opposite party no.3 entered his appearance through his counsel and contested the case. It is contended by the learned counsel for the petitioner that since the wife of the petitioner is the best person to say as to whether she was wrongfully confined or not, steps should have been taken through the Inspector in-charge of Bhograi police station to make her appear in the Court to ascertain the correct state of affairs and since the same has not been done and only after hearing the learned counsel for the petitioner and the learned counsel for the opposite party no.3, the impugned order was passed, the same is illegal and liable to be set aside.

Learned counsel for the State, on the other hand, supported the impugned order and contended that since there was no material before the learned J.M.F.C., Jaleswar that the wife of the petitioner has been wrongfully confined by her brother-in-law, the question of issuance of search warrant does not arise.

Section 97 of Cr.P.C. which deals for search for persons wrongfully confined requires that the Magistrate must have reason to believe, before issuing the warrant, that any person was confined under such circumstances which would amount to an offence. Unless the Magistrate has reason to believe that a person is confined under such circumstances that the confinement itself amounts to an offence, the issue of a warrant under this section is without jurisdiction. The Magistrate is not empowered to issue search warrant under this section on the mere allegations made in the affidavit filed along with the petition before him. The expression "reason to believe" implies a belief in judicial mind, arrived at after consideration of the available material with a sense of responsibility and effort of mind without ignoring as far as possible the other side of controversy. Section 97 of Cr.P.C. does not cast any obligation on the Magistrate to hold a detailed enquiry or to record such findings which are necessary after adjudication. Whether a search warrant under this section should be issued or not depends upon the facts and circumstances of a case.

When notice was issued to the opposite party no.2 and it was held to be sufficient and the opposite party no.2 did not think it proper to appear in the case, no one can compel her to make her appearance and contest the case. If during the course of enquiry,

in the interest of justice the Court thinks it proper, it can ensure the attendance of the person concerned and record his/her statement to arrive at a just conclusion.

In the case in hand, a duty was cast on the petitioner, who has filed the petition for issuance of search warrant to bring prima facie material on record before the Court to show that his wife had been wrongfully confined. When it has come on record in the final report submitted in the case instituted by the petitioner by the Investigating Officer that on account of torture of the petitioner on the opposite party no.2, she left the petitioner's house and was staying with her brother-in-law (opposite party no.3), in such a situation, there was no material before the Court regarding her wrongful confinement. Thus, I am of the humble view that the learned J.M.F.C., Jaleswar has rightly rejected the petition under section 97 of Cr.P.C.

Accordingly, the Criminal Revision being devoid of merits stands dismissed.

Urgent certified copy of this order be granted on proper application.

(S.K. Sahoo)
Judge