

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.438 of 2022

Babuli Rout & others.

....

Petitioners

-versus-

State of Odisha & another.

....

Opposite Parties

CORAM: JUSTICE S.PUJAHARI

ORDER

26.07.2022

Order No.

04.

1. This matter is taken up through Hybrid mode.
2. The petitioners in this application under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") have prayed for quashing of the criminal proceeding in G.R. Case No.185 of 2018, arising out of Odagaon P.S. Case No.121 of 2018 pending on the file of the learned Gram Nyayadhikari-cum-J.M.F.C., Odagaon for alleged commission of offences under Sections 493, 417, 294, 323 and 506/34 of IPC.
3. Heard the learned counsel for the petitioners and the learned counsel for the State, so also the learned counsel for the opposite party no.2.

4. As it appears, the present petitioners had earlier come to this Court seeking quashment of the complaint petition vide 1.C.C. No.60 of 2018 initiated at the instance of the present opposite party no.2. Since the said complaint filed was at a belated stage and the complainant had failed to raise the allegation of rape though filed the present F.I.R. which he raised in the complaint, this Court quashed the complaint petition vide order dated 04.08.2021. The said order of this Court stated to have been upheld by the Apex Court. Now, the present petitioners have come to this Court seeking quashment of the aforesaid proceeding.

5. It is never the case of the petitioners that no offence is made out against them. But, it is his contention that since no offence under Section 493 of IPC is made out at all as there was no marriage whatsoever, which is a sine-qua-non for proceeding against the petitioners, the proceeding is liable to be quashed.

6. Needless to say that at the time of framing of charge, the petitioners did not contest the same before the trial Court, but only pleaded not guilty and faced the trial. Evidence in the aforesaid case has already begun. For the same, this Court is not inclined to quash the entire proceeding much less the offence under Section 493 of IPC in the midst of the trial.

7. However, giving liberty to the petitioners to raise the contention that any particular offence is not made out from the

evidence on record at the time of argument, in such a case, it goes without saying that the trial Court addressing the same vis-à-vis the evidence on record would render the judgment.

8. With the aforesaid order, this CRLMC stands disposed of being dismissed.

9. Interim order dated 06.04.2022 passed by this Court stands vacated.

10. A copy of this order be communicated to the Court below forthwith.

(S. Pujahari)
Judge

MRS

