

A.F.R.

ORISSA HIGH COURT: CUTTACK

CRLMC No.2398 of 2016

In the matter of application under Section 482 of the
Criminal Procedure Code, 1973.

Sakta Mishra and another Petitioners

-Versus-

Santosh Kumar Mishra
and others Opp. Parties

For Petitioners : Mr. S.K. Dash, Advocate

For Opp. Parties : None

P R E S E N T:

HONOURABLE MR. JUSTICE G. SATAPATHY

Date of hearing: 09.12.2022, Date of judgment: 23.12.2022

G.SATAPATHY, J. The Petitioners seek the indulgence of
the Court to exercise inherent power to set aside the
order passed on 13.04.2005 by learned S.D.J.M.,
Bhubaneswar in 1CC Case No. 626 of 2015 taking

cognizance of offence U/Ss. 494/506/34 of IPC together with issuing process against the petitioners and consequently, to quash the criminal proceeding in such complaint.

2. Facts in nut-shell is O.P. No. 1 instituted a complaint in 1CC Case No. 626 of 2015 against the Petitioners and O.P. Nos. 2 to 4 in the Court of learned S.D.J.M., Bhubaneswar, and in such complaint, the complainant-O.P. No.1 has stated that the Petitioner No. 1 had married to one Ajay Kumar Sharma on 02.08.2002 by registering their marriage before the Marriage Officer, Cuttack in terms of Special Marriage Act, 1954, but subsequently after two years of this marriage, the Petitioners and O.P.Nos.2 to 4 approached the parents of O.P. No. 1 and negotiated for marriage of Petitioner No.1 with O.P. No.1 and accordingly, their marriage was solemnized on 08.12.2004, but it was alleged in the complaint that the marriage of Petitioner No.1 with O.P.No.1 was done without disclosing the

earlier marriage of Petitioner No.1 with said Ajaya Kumar Sharma by practicing fraud and when O.P. No.1 confronted this fact to Petitioners, they threatened him to kill, if he exposes the fact of earlier marriage anywhere and accordingly, on 28.02.2015 they sent two anti-social to his house and such persons threatened him to kill. On this complaint, the learned SDJM, Bhubaneswar recorded the initial statement of complainant and statement of witnesses in an inquiry U/S. 202 Cr.P.C. and on finding prima facie case, the learned SDJM, Bhubaneswar by the impugned order took cognizance of offences U/Ss. 494/506/34 of IPC and issued process in the form of summons to the Petitioners and O.P. No.2 to 4. Feeling aggrieved with such order, the Petitioners have approached this Court in this CRLMC by arraying the complainant as O.P. No.1 and accused No. 2 to 4 as Proforma OP No.-2 to 4.

3. In the course of hearing of CRLMC, in relying upon the judgment passed by learned Judge, Family

Court, Bhubaneswar in C.P. No. 479 of 2011 and order passed on 02.04.2003 by learned Judge, Family Court, Cuttack in C.P. No. 562 of 2002, learned counsel for the Petitioners submits that since the marriage of Petitioner No.1 with Ajay Kumar Sharma, had already been annulled by an order passed on 02.04.2003 by the learned Judge, Family Court, Bhubaneswar in C.P. Case No. 562 of 2002, which is more than one year and four months before the marriage of petitioner No.1 with OP No.1, the cognizance taken by the learned SDJM, Bhubaneswar for offence U/S. 494 is not sustainable and she being the legally married wife of O.P. No.1 who had unsuccessfully prosecuted a proceeding before the learned Judge, Family Court, Cuttack in C.P. Case No. 479 of 2011 to get a divorce from Petitioner No.1 itself speaks in volume that the O.P. No.1 by suppressing the facts has instituted the complaint in this case and thereby, the very foundation of complaint being on false premises, the impugned order is unsustainable in the

eye of law and therefore, the criminal proceeding against the Petitioners and O.P. Nos. 2 to 4 is nothing but an abuse of process of Court. In summing up the argument, learned counsel for the Petitioners prays to quash the impugned order and the criminal proceeding in 1CC Case No. 626 of 2015. None appears on behalf of O.Ps. despite valid service of notice upon them.

4. After having considered the uncontroverted submissions made for the petitioners, there appears hardly any dispute with regard to the admitted averments of the complaint in which the complainant-O.P.No.1 has stated in Column No.4 with respect to Date, Place and Time of occurrence as "on 08.12.2004 and subsequent dates and finally on 02.04.2015". Besides, the complainant in Column No.8 under the heading "facts of the case" has described that his wife (Petitioner No.1) was married to one Ajaya Kumar Sharma on 02.08.2002 under Special Marriage Act, 1954 before Marriage Officer, Cuttack, but the petitioner

No.1 married again to O.P.No.1 on 08.12.2004 by making false and fraudulent representation. On the aforesaid averments, the learned Court by the impugned order took cognizance of offence U/S.494 of IPC, but strangely enough O.P.No.1 has not arraigned Mr. Ajay Kumar Sharma as accused person in the complaint and such facts has slipped away from the watchful eye of the learned Court while taking cognizance of offence U/S. 494 of IPC. However, the petitioners have produced the certified copy of order passed on 02.04.2003 by learned Judge, Family Court, Bhubaneswar in C.P. No.562 of 2002 in which the marriage of Petitioner No.1-Sakta Mishra with Ajay Kumar Sharma had been annulled by a decree of the competent Court on 02.04.2003 and, therefore, no case U/S.494 of IPC is prima facie made out against the petitioners and others in absence of the fact of second marriage of petitioner No.1 with O.P.No.1 during the subsistence of earlier marriage.

5. Challenge has also been made to the impugned order taking cognizance of other offence U/S.506 of IPC, but neither the initial statement of the complainant-O.P.No.1 nor the statement of witnesses examined in the inquiry U/S.202 of Cr.P.C. has been produced by the petitioners in this Court for proper scrutiny of the allegation constituting the offence U/S.506 of IPC, however, a bare perusal of the complaint would go to indicate about the allegations against the petitioners for threatening the complainant to kill, if he exposes the fact of earlier marriage anywhere and on 28.02.2015 the petitioners sent two antisocial, who came to the house of the complainant and threatened to kill him, if he goes ahead to lodge any complaint against the petitioners, which is very much available at Sub-paragraph-9 of Paragraph-8 of the complaint under the heading of "facts of the case".

6. Above allegation of threatening when considered on the face of the Latin maxim "de minimis

non curat lex” which means that law does not govern trifles, such allegation of threatening being insignificant requires to be ignored as law ignores insignificant details. Besides, the Court of justice generally does not take trifles and immaterial matters into account, except under a peculiar circumstance where there is clear intention/*mensrea* of the person accused of the offence. Law is also very clear on the point that mere assertions/criminal intimidation through words without any intention to cause alarm in the mind of the complainant and that too, without the requisite *mensrea*/intention, the offence U/S.506 of IPC cannot be attracted against the person giving such threat or intimidation. In order to constitute an offence U/S.506 of IPC, it must be shown that the person accused of such offence actually threatened the another with injury to his person, reputation or property or to the person or reputation of anyone in whom that person is interested, with intention to cause alarm in the mind of the

threatened person, who on such intimidation get frightened. In the present case, there is absolutely no averment in the complaint that the complainant-OP No.1 was in fact frightened on the threat of the petitioners which caused alarm in his mind.

7. In the present case even if the allegations in the complaint are read as a whole, and are accepted in their entirety as true, the ingredients of Section 506 of IPC are not attracted in so far as the petitioners and O.Ps.No.2 to 4 herein are concerned. Except the allegations as raised by the complainant in Sub-paragraph-9 of Paragraph-8 of the complaint under the heading of "facts of the case" to support the charge U/S.506 of IPC, there is no specific allegation against the petitioners or anybody else who had threatened the complainant with injury to his person or reputation and when the above assertion of allegations for threatening the complainant are considered on the face of unfounded allegation of bigamy against the petitioner

No.1, it would only give rise to a situation where such assertions become motivated one with ulterior motive to put the petitioners in undue harassment. In the above premises, there appear hardly any ingredients of Section 506 of IPC disclosed in the complaint.

8. A careful and meticulous analysis of complaint of facts together with the document produced by the petitioners in which the marriage of the petitioner No.1 with Ajay Kumar Sharma was found annulled by a decree of a competent Court much before the marriage of petitioner No.1 with OP No.1, it appears to the Court that the criminal proceeding arising out of the impugned order is nothing but an abuse of process of Court and the further continuance of the criminal proceeding against the petitioner and O.Ps. No.2 to 4 is further abuse of process of Court. Hence, the impugned order is hereby set-aside.

In the result, the CRLMC is allowed on the contest, but in the circumstance without any costs. As a

necessary corollary, the impugned order together with the complaint is hereby quashed in the interest of justice.

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G.SATAPATHY,
JUDGE



Orissa High Court, Cuttack
The 23rd December, 2022, Priyajit