

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 3005 of 2016

Diptimayee Pradhan

....

Petitioner

Mr. Rudra Narayan Parija, Advocate
-versus-

State of Orissa & another

....

Opposite Parties

Mr. Janmejaya Katikia, Additional Governemnt Advocate

**CORAM:
THE CHIEF JUSTICE**

Order No.

**ORDER
25.11.2022**

04. 1. At the outset, it requires to be noticed that despite service of notice on the Opposite Party No.2, none appears on his behalf.
2. On 23rd August 2018, the following order was passed by this Court:

“Heard learned counsel for the petitioner.

It is submitted that the case has been registered on the F.I.R. lodged by the present opposite party no.2, who is the husband of the petitioner, due to misunderstanding and there is chance of settlement between the parties, in case the matter is referred to Conciliation.

Considering the submissions, notice be issued to opposite party no.2-Sushanta Kumar Behura by registered post with A.D., returnable within four weeks, requisites for issue of such notice shall be filed within three working days.

As an interim measure, it is directed that there shall be stay of further proceeding in G.R. Case No.1483 of 2013 pending in the court of the learned S.D.J.M., Kendrapara till next date.

List this matter on 27.09.2018. xxx.”

3. With the Opposite Party No.2 not appearing, the occasion to refer the parties for conciliation does not arise.

4. It is seen that cognizance was taken against the Petitioner on an FIR registered by Opposite Party No.2-husband for the offence under Section 494 IPC. Learned counsel for the Petitioner has referred to Section 198(1) Cr PC which states that cognizance cannot be taken of an offence punishable under Chapter XX of IPC (which includes Section 494 IPC) “except upon a complaint made by some person aggrieved by the offence”. In the present case, it has been averred without any contradiction, that it was an FIR that was registered by the husband and not a complaint and, therefore, cognizance could not have been taken of the offence under Section 494 IPC.

5. It must be noted here that in terms of the order dated 22nd April, 2015 of the S.D.J.M., Kendrapara in G.R. Case No.1483 of 2013, cognizance was taken of the offences additionally under Sections 420/506/34 IPC. But as far as the Petitioner is concerned, she is aggrieved only by that part of the order which takes cognizance of the offence under Section 494 IPC.

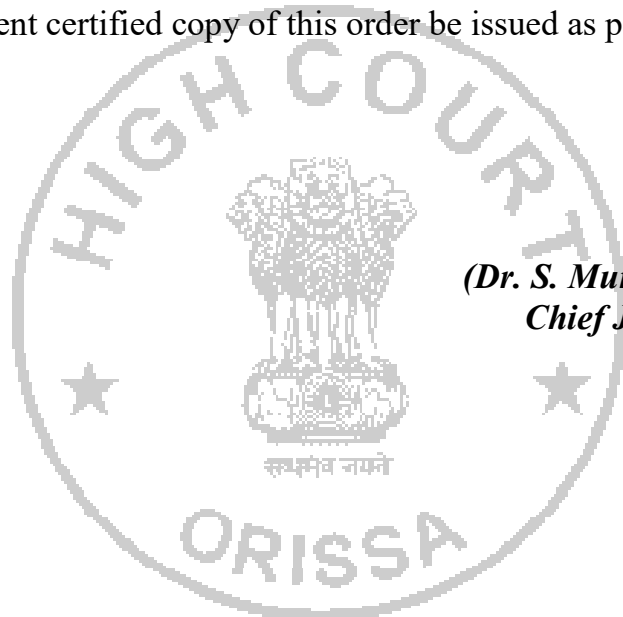
6. In view of the clear legal position, it is plain that the learned S.D.J.M. could not have by the aforementioned order taken

cognizance of the offence under Section 494 IPC without a written complaint by Opposite Party No.2 husband.

7. Accordingly, the impugned order dated 24th February, 2015 is quashed only to the extent that it takes cognizance of the offence under Section 494 IPC against the Petitioner.

8. The petition is disposed of in the above terms. The interim order passed earlier stands vacated.

9. An urgent certified copy of this order be issued as per rules.



(Dr. S. Muralidhar)
Chief Justice

M. Panda