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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1327 of 2015

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

Jaga Sarabu

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Petitioner

-Versus-

State of Orissa and another

Opp. Parties

For Petitioner : Mr. A.Das, Advocate

For Opp. Parties : Mr. S.N.Das, ASC, [O.P. No. 1]

None [O.P. No.2]

P R E S E N T:

HONOURABLE MR. JUSTICE G. SATAPATHY

Date of hearing: 13.10.2022: Date of judgment: 29.11.2022

G.SATAPATHY, J.

The Petitioner by way of this application

under Section 482 Cr.P.C seeks to quash the order passed

on 20.03.2014 by learned S.D.J.M., Nabarangpur in G.R.

Case No. 1174 of 2013 by which cognizance of offences

was taken and process was issued against the Petitioner.

2. Facts as projected in this case in precise are one Aruna Sarabu of village Pilka lodged an FIR on 26.11.2013 before IIC Nabarangpur alleging therein that she had married to the Petitioner Jaga Sarabu of village Makia around three months ago and he kept her in his village Makia for three months. During her such stay for eighty days period, she was subjected to torture physically and mentally as well as she was not provided with food by her husband (Petitioner) and mother-in-law who also assaulted her. On 19.11.2013, her husband (Petitioner) went to police to lodge a false case against her and her husband (Petitioner) was asking to bring Rs.50,000/- from her father, otherwise he would kill her. The above fact was within the knowledge of villagers Makia and she had come to her mother by concealing herself to inform about these facts.

2.1. On the basis of the above F.I.R., Nabarangpur P.S. Case No. 323 dated 26.11.2013 was registered for commission of offences punishable under sections 498(A)/323/506/34 IPC r/w 4 of D.P. Act which was investigated into resulting in submission of charge-sheet

against Petitioner and two others. Consequently upon conspectus of materials and documents produced by the I.O. and finding prima facie case, learned S.D.J.M., Nabarnagpur by the impugned order took cognizance of offences under Sections 498(A)/323/506/34 IPC r/w 4 of D.P. Act and issued process against the Petitioner and others. Feeling aggrieved with the impugned order, the Petitioner has approached this Court in this CRLMC to quash the order taking cognizance of offences.

3. In the course of hearing of the CRLMC, Mr. Anirudha Das, learned counsel for the Petitioner by placing the judgment passed by the Judge, Family Court, Nabarangpur in Cr.P. No. 64 of 2016 submits that the learned Judge, Family Court has come to a finding that the O.P. No.2 is not the wife of the Petitioner and thereby, she cannot maintain a criminal proceeding for offence under Section 498(A) of IPC. It is also submitted by him that when O.P. No.2 is not the legally married wife of the Petitioner which is already established by the judgment of learned Judge, Family Court, Nabarangpur, the impugned order in this case has no sanctity under law and to attract

an offence under Section 498(A) of IPC, there must be a legal relationship of husband and wife between the Petitioner and O.P. No.2, but that not being so in this case, the criminal proceeding against the Petitioner is otherwise bad in the eye of law. In order to buttress his contention, learned counsel for the Petitioner places reliance upon the decision in the case of **Reema Aggrawal Vrs. Anupam and another; (2004) 3 SCC 199** and **Unnikrishnan @ Chandu Vrs. State of Kerala; (2017) SCC online KER 12064** and prays to quash the impugned order.

3.1. On the contrary, Mr. S.N. Das, learned counsel for the State by relying upon the decision in the case of **A.Subash Babu Vrs. State of Andhra Pradesh and another; (2011) 7 SCC 616** submits that the law declared in **Reema Aggrawal (supra)** is binding on all Courts and the Petitioner being the husband of O.P. No.2 cannot take the plea that the marriage was invalid and thereby the criminal proceeding for offence under section 498(A) is misdirected. It is further submitted that husband contracting second marriage during the subsistence of

earlier marriage can be charged for offence under section 498(A) of IPC and merely because a judgment is rendered by learned Judge, Family Court in proceeding under section 125 of Cr.P.C. by itself cannot declare the status of O.P.No.2 as concubine or not the wife of Petitioner and whatever observation passed by the learned Judge, Family Court is on the basis of a proceeding under section 125 Cr.P.C. which is not binding upon this Court and the impugned order taking cognizance of offence having passed with sound judicial application of mind does not require any interference by this Court. It is, accordingly, prayed by him to dismiss the CRLMC.

4. After having considered the rival submissions of the parties, the moot question crops up for consideration in this CRLMC is whether the impugned order is bad in the eye of law for taking cognizance of offence under section 498-A of the IPC on account of finding of learned Judge, Family Court, Nabarangpur in a proceeding under section 125 of Cr.P.C concluding that the informant (O.P.No.2) is not the wife of Petitioner herein and thereby, the criminal trial arising out of such

impugned order pursuant to the F.I.R. at the instance of the informant is otherwise then an abuse of process of the Court and the same needs to be set aside/quashed to secure the ends of justice. Adverting to the contention of the Petitioner and examining the same on the principle of well settled law, it appears that the Petitioner has relied upon the decision in ***Unnikrishnan (supra)***, but the same having rendered on appreciation of evidence on record by the Appellate Court is not applicable to the present case at hand since evidence is yet to be recorded in this case and the facts under which the present criminal case runs is on the claim of the informant who claims herself to be the wife of the Petitioner through a marriage in the F.I.R. which facts can be considered independently in the course of trial. More so, in the relied on case, on the basis of admitted statement of the deceased wife revealing some acts of cruelty said to have undergone during her live in relationship with the accused, the High Court of Kerala considering the same to be a ground has observed the accused to be entitled for acquittal for offence under section 498-A of IPC by allowing the appeal.

The case at hand is at the stage of taking cognizance of offence and issuance of process to the accused, but trial is yet to be conducted. However, on conspectus of FIR and statement of witnesses would go to disclose about marriage between the Petitioner and O.P. No.2 which need to be established during the trial and since there appears some materials for taking cognizance of offence under section 498-A of IPC, it would not be proper to come to a conclusion that the O.P No. 2 is not the wife of the Petitioner merely on the basis of finding of the Family Court which is also rendered in a proceeding under section 125 of Cr.P.C. which is by nature a proceeding for grant of maintenance to wife, children and parents, but strict proof of marriage between the parties in a proceeding under section 125 of Cr.P.C. normally should not be insisted upon as a condition precedent for grant of maintenance to the wife.

5. It is true that learned Judge, Family Court has concluded by his judgment in Cr.P. No. 64 of 2016 which is admittedly a proceeding U/S 125 of Cr.P.C. that the O.P. No.2 (Petitioner therein) cannot be treated as the

wife of Petitioner (O.P. therein) but such conclusion can be arrived at in a civil proceeding to declare the status of a woman as such, if the person claiming for such declaration makes out a case for the relief on assessment of evidence and pleadings on record, but the learned Judge, Family Court herein at best could have concluded while refusing to grant maintenance by his judgment that the Petitioner could not establish her relationship with O.P. as husband and wife.

6. Be that as it may, both the parties in this case rely upon the decision in **Reema Aggrawal (Supra)** wherein the Apex Court at Paragraph-18 of the judgment has observed as follows.

"The concept of "dowry" is intermittently linked with a marriage and the provisions of the Dowry Act apply in relation to marriages. If the legality of the marriage itself is an issue, further legalistic problems do arise. If the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose of which Sections 498-A and 304-B IPC and Section 113-B of the Indian Evidence Act, 1872 (for short "the Evidence Act") were introduced, cannot be lost

sight of. Legislation enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit positively requires to be interpreted with a certain element of realism too and not merely pedantically or hyper technically. The obvious objective was to prevent harassment to a woman who enters into a marital relationship with a person and later on, becomes a victim of the greed for money. **Can a person who enters into a marital arrangement be allowed to take shelter behind a smokescreen to contend that since there was no valid marriage, the question of dowry does not arise? Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment to a woman over demand of money.** The nomenclature "dowry" does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section-498-A. The legislature has taken care of children born from invalid marriages. Section- 16 of the Hindu Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that the legislature which was conscious of the social stigma attached to children of void and voidable marriages closed its eyes to the plight of a woman

who unknowingly or unconscious of the legal consequences entered into the marital relationship? If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The first exception to Section 494 has also some relevance. According to it, the offence of bigamy will not apply to "any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction". It would be appropriate to construe the expression "husband" to cover a person who enters into marital relationship and under the color of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerces her in any manner or for any of the purposes enumerated in the relevant provisions — Sections 304-B/498-A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498-A and 304-B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of "husband" to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of their role and status as "husband" is no ground to exclude them from the purview of Section 304-B or 498-A IPC, viewed in the context

of the very object and aim of the legislations introducing those provisions.

7. The plea of no marriage was canvassed for the Petitioner in the course of hearing of this CRLMC, but in a proceeding under section 482 of Cr.P.C., this Court is not sitting over a case in exercise of original jurisdiction to decide the status of the parties by way of declaration which can be done by a Civil Court in exercise of power under section 34 of the Specific Relief Act, 1963 after undertaking a full-fledged trial. It is no doubt advanced for the Petitioner that a criminal proceeding under section 498-A of the IPC is not maintainable against the Petitioner for want of valid marriage, but after going through the uncontroverted allegations appearing in the FIR and statement of witnesses under section 161 Cr.P.C., this Court does not find any substance to conclude that a proceeding under section 498-A of IPC is not maintainable against the petitioner. Law is well settled that a criminal proceeding can be quashed where the basic ingredients of the offences are not constituted/disclosed from a bare reading of the uncontroverted allegations appearing FIR

and other materials so collected by the Investigating Agency. It is also extremely unfair and harsh to a woman who claims herself to be wife of a person by entering into a marital relationship and later on become a victim of desertion by the said person taking plea of absence of a valid marriage. The obvious objective of enacting offence under section 498-A of IPC is to secure the prevention of harassment to a woman from cruelty meted out to her by husband or his relatives. The aforesaid being the sacred object of offence under section 498-A of IPC, whether a person who enters into a marital relationship be allowed to take the refuge behind a smokescreen to take the plea that since there was no valid marriage, the proceeding under section 498-A of IPC against him is not maintainable, but such plea having deleterious effect on the morality of the women entering into a kind of relationship of marriage with that person, it would not be proper for a Court to undertake hair splitting scrutiny of materials on record in a proceeding under section 482 of Cr.P.C. to conclude that the proceeding under section 498-A of IPC is not maintainable for want of valid

marriage which would not only encourage harassment of women but also demoralizes them.

8. In **Subash Babu (Supra)**, the Apex Court at paragraph-55 and 57 has observed as follows.

55. *"In view of the firm and clear law laid down on the subject, this Court is of the confirmed view that the High Court was **not justified** at all in quashing the proceedings initiated against the appellant under section 498-A of the Penal Code **on the ground that Respondent No. 2 was not the "wife" within the meaning of Section 498-A IPC and was not entitled to maintain a complaint under the said provision.** The question therefore which arises for consideration of the Court is whether the said finding recorded by the High Court can and should be set aside in the present appeal which is filed by the husband."* (Emphasis supplied by bold letters)

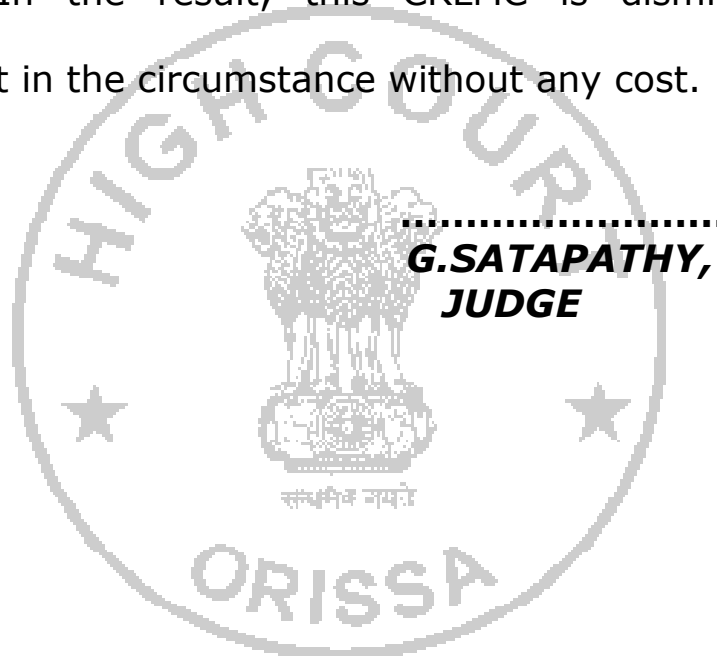
57. *"This Court does not find any substance in the abovementioned argument of the learned counsel for the appellant. The law declared by this Court in **Reema Aggrawal (supra)** was binding on all courts including the learned Single Judge of the High Court of Andhra Pradesh who decided the present case in view of the salutary provisions of Article 141 of the Constitution. The learned single Judge of the High Court could not*

*have afforded to ignore the law declared by this Court in **Reema Aggrawal** while considering the question whether proceedings initiated by Respondent No.2 for commission of the offence punishable under Section 198-A IPC should be quashed or not. The High Court has completely misdirected itself in quashing the proceedings for the offence punishable under section 498-A IPC. There is no manner of doubt that the finding recorded by the High Court that Respondent No. 2 is not the wife within the meaning of Section 498-A of the Penal Code runs contrary to the law declared by this Court in **Reema Aggrawal**."*

9. In view of the analysis of facts stated above and discussions of law laid down by the Apex Court in **Reema Aggrawal (supra)** and **A. Subash Babu (supra)** and taking into consideration the uncontroverted allegation appearing in the FIR and statement of witnesses together with other documents collected in the course of investigation, this Court does not find any substance on the submissions advanced for the Petitioner which merits consideration for the proceeding under section 498-A of IPC to be not maintainable against the Petitioner, rather there appears prima facie materials for proceeding against the Petitioner for offences alleged against him and

thereby, the learned Court of S.D.J.M., Nabarangpur has not committed any illegality in taking cognizance of offences by the impugned order which cannot be interfered by this Court in exercise of power of inherent jurisdiction as the same has been passed on proper legal scrutiny of materials on record. Hence, it is ordered.

10. In the result, this CRLMC is dismissed on contest but in the circumstance without any cost.



***Orissa High Court, Cuttack
The 29th November, 2022, Priyajit***