

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1113 of 2015

Kabita Rout & others ***Petitioners***

-versus-

State of Orissa & another ***Opposite Parties***

**CORAM:
THE JUSTICE S.PUJAHARI**

**ORDER
04.07.2022**

**Order
No.**

05. 1. This matter is taken up through Hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioners for quashment of the order dated 27.01.2015 passed by the learned J.M.F.C., Jajpur Road in ICC No.608 of 2013 framing the charge under Section 420 IPC against them.
3. Heard learned counsel for the Petitioners. None appears for the Opposite Party No.2.
4. As it appears the Opposite Party No.2 is the wife of Petitioner No.3. When marital discord occurred between them, a complaint was made alleging dowry torture and misappropriation of gold ornaments given to her at the time of marriage. Such complaint was sent under Section 156(3) Cr.P.C. to the concerned Police Station wherein undisputably charge sheet has already been filed against the husband (Petitioner No.3 in this case) for alleged commission of offence punishable under Sections 498-A/323/506/495/406/34 IPC and Section 4 of the D.P Act. Pursuant to the same, it is submitted

that cognizance has been taken and the husband has been proceeded with in the said case. However, subsequently when the victim came to know that her gold ornaments which were pledged by her husband was going to be auctioned by the financier, she filed a complaint against the Petitioners alleging commission of offence punishable under Section 420 IPC. The court in such a proceeding has taken cognizance and also framed charge to proceed against the Petitioners. The Petitioners as such have challenged the same to be misconceived in this petition.

5. As it appears for keeping the alleged gold ornaments of the wife and converting it for his own use, the husband has already been charged for commission of offence under Section 406 IPC i.e. criminal breach of trust and cognizance for the same stated to have been taken. A complaint so filed thereafter for cheating the Opposite Party No.2-Complainant of the gold ornaments kept by the husband which was hypothecated are going to be auctioned could not have been entertained by the court in the aforesaid factual backdrop inasmuch as for the self-same cause the husband has been proceeded with under Section 406 IPC. The court therefore could not have framed the charge. Accordingly, this Court allows this Criminal Misc. Case and consequently quashes the entire proceeding in ICC No.608 of 2013 pending in the court of learned J.M.F.C., Jajpur Road. It is directed that the court in seisin over the matter on receipt of a certified copy of the order shall close the proceeding against the Petitioners.

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

PKS

(S. Pujahari)
Judge

