

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.600 of 2011

Digambar Samal

....

Petitioner

Mr. Kedarnath Parida, Advocate

-Versus-

Narmada Mohanty and others

....

Opposite Parties

Mr. A.K. Jena, Advocate for OP No.1

CORAM:

JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT:04.07.2022

1. Present petition under Section 482 Cr.P.C. is filed by the petitioner challenging the legality and judicial propriety of the impugned order dated 21st December, 2010 passed in C.R. No.7 of 2006 by the learned Additional Sessions Judge, Kendrapara for directing the S.D.J.M., Kendrapara to take cognizance of the offence punishable under Section 498-A IPC against him on the grounds *inter alia* that the same is illegal, arbitrary and without application of judicial mind to the facts and circumstances of the case and therefore, liable to be set aside.

2. OP No.1 is the informant, who lodged the F.I.R. alleging overt acts against the petitioner and OP Nos.2 to 8, who are the other family members of the petitioner, consequent upon which, Kendrapara P.S. Case No.337 of 2003 was registered under Sections 498-A/494/34 IPC which corresponds to G.R. Case No.703 of 2003 pending in the court of S.D.J.M., Kendrapara. In that case, as claimed by the petitioner, after investigation, final form was submitted on 4th May, 2004 stating the case to be false. The petitioner contends that a PR under Section 211 IPC was

submitted against OP No.1, who, in the meantime, filed a protest petition registered as ICC No.108 of 2004, wherein, the learned S.D.J.M., Kendrapara after initially proceeding dismissed the same by order dated 22nd January, 2005 which was challenged in C.R. No.3 of 2005 and ultimately, was disposed of by the learned CJM-cum-ASJ, Kendrapara, who confirmed the order of dismissal by order dated 12th January, 2006. As per the petitioner, OP No.1 thereafter filed C.R. No.7 of 2006 before the Additional Sessions Judge, Kendrapara challenging the said order and the same resulted in the passing of the impugned order dated 21st December, 2010. The learned court below allowed the revision filed by OP No.1 and directed the S.D.J.M., Kendrapara to take cognizance under Section 498-A IPC only. Being aggrieved of the aforesaid decision, the petitioner contends that despite a final report being submitted and a prosecution under Section 211 IPC launched against OP No.1 and the fact that he has been allegedly convicted under Section 376 and 417 IPC in S.T. Case No.28/414 of 2003 arising out of Kendrapara P.S. Case No.192 of 2002 and G.R. Case No.331 of 2002, the learned court below without any basis holding it to be a matrimonial mischief directed the S.D.J.M., Kendrapara to take cognizance under Section 498-A IPC which is not at all sustainable and thus, deserves to be interfered with.

3. Heard Mr. K. Parida, learned counsel for the petitioner and Mr. A.K. Jena, learned counsel for OP No.1. None appeared for OP Nos.2 to 8.

4. Initially a case was registered which corresponds to Kendrapara P.S. Case No.192 of 2002, wherein, the petitioner was charge sheeted under Section 376 and 417 IPC with regard to an incident during which OP No.1 was allegedly raped. It is not denied by the parties that the petitioner was convicted in S.T. Case No.28/414 of 2003. The learned counsel Mr. Parida contends that

the petitioner has been convicted and sentenced under Section 376 IPC and therefore, he could not have been prosecuted in ICC Case No.108 of 2004 filed by OP No.1. Mr. Parida further contends that in Kendrapara P.S. Case No.337 of 2002, a final report was submitted but the learned court below did not consider the same and illegally passed the order for taking cognizance under Section 498-A IPC. It is also claimed that there has been no valid marriage between the parties and therefore, no offence under Section 498-A IPC could either be said to have been made out, the fact which was alleged not to have been appreciated by the learned court below.

5. Mr. Jena, on the contrary, contends that notwithstanding the conviction under Section 376 IPC with 7 years of imprisonment and 6 months term for Section 417 IPC along with a fine of Rs.5,000/- each stands against the petitioner, which is currently under challenge in CrI. Rev. 608 of 2017 arising out of Criminal Appeal No.23 of 2006, the case against him is maintainable in view of the fact that the matrimonial dispute *inter se* parties was the subject of adjudication in RPFAM No.19 of 2014 which was challenging the interim maintenance directed by the Family Court, Kendrapara in C.P. No.428 of 2003. It is further contended that the parties have had another round of litigation in RPFAM No.5 of 2007, wherein, the Family Court was directed to complete the trial by the end of June, 2010 with a direction to the petitioner to make a further deposit of Rs.5,000/- for payment to OP No.1. It is further made to understand that the petitioner filed W.P.(CrI.) No.334 of 2011 with regard to paternity test, whereas, OP No.1 approached this Court seeking payment of arrear interim maintenance by filing W.P.(C) No.15539 of 2012 and both the matters were disposed of by a common order dated 31st July, 2013, where after, C.P. No.428 of 2003 was decided on contest by the Family Court, Kendrapara and order was passed on 16th January,

2014 directing the petitioner to pay a monthly maintenance @ Rs.1500/- to OP No.1 with effect from 18th July, 2013 after adjustment of payments already made. Mr. Jena lastly submits that the aforesaid order of the Family Court was challenged in RPFAM No.19 of 2014 which was decided against the petitioner, who had then approached the Supreme Court by filing SLP (Crl.) No.10633 of 2015 and the same was dismissed, inasmuch as, the order of maintenance in favour of OP No.1 was not interfered with and as against the backdrop of above facts, the impugned order dated 21st December, 2010 cannot be set aside.

6. Against the order of interim maintenance, as mentioned earlier, the petitioner had moved the Family Court in C.P.No.428 of 2003 and then to this Court in RPFAM No.19 of 2014. It is not denied by Mr. Parida, learned counsel for the petitioner that the order of this Court in RPFAM No.29 of 2014 dated 11th September, 2015 was challenged before the Supreme Court in SLP (Crl.) No.10633 of 2015 and it resulted in dismissal. The self-same question regarding the charge of rape against the petitioner and conviction vis-à-vis maintainability of criminal action, wherein, cognizance is directed to be taken under Section 498-A IPC was the subject matter of adjudication before this Court in RPFAM No.19 of 2014 and it was rejected while entertaining a challenge to the interim maintenance ordered by the Family Court in C.P. No.428 of 2003. So, therefore, the Court is not inclined to reconsider or re-examine the issue raised by the petitioner as to the sustainability of the present criminal proceeding which is based on the premise of a matrimonial dispute between the parties. In fact, initially the rape case was registered in which the petitioner was convicted in the year 2006 and later on, he said to have stayed with OP No.1 on the intervention of the villagers and well wishers. According to Mr. Jena, the marriage between parties was held on 16th January, 2002

and thereafter, both had a conjugal relationship which finally led to OP No.1 conceiving. The factum of marriage between petitioner and OP No.1 was considered by the Family Court and has been taken note of by this Court in RPFAM No.19 of 2014, while upholding interim maintenance. In such view of the matter, when the objection to marriage was dealt with while dealing with the maintenance vis-à-vis OP No.1 and since the petitioner failed to deny the relationship, considering which, this Court in RPFAM No.19 of 2014, being conscious of the standard of proof required, while entertaining a request for maintenance under Section 125 Cr.P.C., upheld the interim relief allowed in C.P. No.428 of 2003. In any case, the petitioner still has an opportunity to put forth his defence during trial challenging the status of OP No.1. This Court perused the impugned order dated 21st December, 2010, wherein, the learned court below elaborately considered the materials on record with regard to marriage and the nature of relationship between the parties and finally, arrived at a conclusion that a case under Section 498-A IPC is prima facie made out excluding other offences punishable under Section 494/323/34 IPC. In other words, the revision which was filed by the petitioner was partly allowed and cognizance under Section 498-A IPC only was directed, which, in the humble view of the Court does not suffer from any serious infirmity.

7. Accordingly, it is ordered.

8. In the result, petition under Section 482, Cr.P.C. filed by the petitioner stands dismissed.

(R.K. Pattanaik)
Judge