

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 265 of 2022

Manmohan Sabar* *Petitioner

Mr.S.K. Dash, Advocate

-versus-

1. State of Odisha

2. Smt. Dina Sabar* *Opp.Parties

Mrs.Susamarani Sahoo
Addl. Standing Counsel

CORAM:
JUSTICE S.K. SAHOO

ORDER
19.07.2022

Order No.

01. This matter is taken up through Hybrid Arrangement (Video Conferencing/Physical Mode).

In this revision petition, the petitioner Manmohan Sabar has challenged the order dated 27.04.2022 passed by the learned S.D.J.M., Paralakhemundi in G.R. Case No.540 of 2017 in dismissing the petition for discharge filed by the petitioner under section 239 of Cr.P.C. and also framing charges under sections 417/493/506 of the Indian Penal Code against him.

It appears that the case arises out of a complaint petition and the victim herself is the complainant and she filed the complaint petition in the Court of learned S.D.J.M., Paralakhemundi, which was registered as ICC Case No.08 of 2017. The said complaint petition was

referred to Inspector in-charge of Rairangpur Police Station under section 156(3) of Cr.P.C. and accordingly Rairangpur P.S. Case no.61 dated 06.12.2017 was registered under section 493 of the Indian Penal Code and ultimately on completion of investigation, charge-sheet was submitted under sections 417, 493, 506 of the Indian Penal Code.

Mr. S.K.Dash, learned counsel for the petitioner contended that the ingredients of the offence under section 493 of the Indian Penal Code are not attracted in this case and the learned trial Court has committed illegality in rejecting the discharge petition filed by the petitioner and framing charges for such offences. He further submitted that the victim filed a petition under section 125 of Cr.P.C. along with her daughter against the petitioner in the Court of learned S.D.J.M., Paralakhemundi in Misc. Case No.30 of 2017 and vide order dated 17.08.2018, the learned S.D.J.M. dismissed the maintenance case and observed that there is no evidence that the petitioner (opposite party in the 125 Cr.P.C. proceeding) has kept the opposite party no.2 (petitioner no.1 in the 125 Cr.P.C. proceeding) as his second wife and there is nothing found from the evidence of P.W.1 (complainant) to say that the opposite party (petitioner in this revision petition) had kept her in her house as his second wife or opposite party (petitioner in this revision petition) represented the petitioner no.1 (complainant) as his wife before the society at any point

of time. Learned counsel for the petitioner contended that in view of such finding given by the learned S.D.J.M., Paralakhemundi, the ingredients of the offence under section 493 of the Indian Penal Code are not attracted and therefore, this Court should invoke its revisional jurisdiction and quash the impugned order, particularly framing of charges under section 493 of the Indian Penal Code and so also under sections 417 and 506 of the Indian Penal Code.

Learned counsel for the State, on the other hand, supported the impugned order and placing the complainant petition, which was treated as F.I.R., contended that the complainant has stated that making her a belief as his wife, the petitioner kept physical relationship with her every day for which she became pregnant. It is further submitted that at this stage, meticulous examination of the statements is not required to be gone into and the appropriate stage for adjudicating the guilt or otherwise would be at the end of the trial and not at the stage of framing of trial.

In the case of **Onkar Nath Mishra and Ors. -Vrs.- State (NCT of Delhi) and Ors., reported in 2008(2) Supreme Court Cases 561**, the Hon'ble Supreme Court while dealing with the nature of evaluation by the Court at the stage of framing of charge held as follows :

"11. It is trite that at the stage of framing of charge, the Court is required to evaluate the

material and documents on record with a view to find out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the Court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

It is of course true that that the maintenance petition filed by the complainant and her daughter against the petitioner, was dismissed by the learned S.D.J.M., Paralakhemundi in Misc. Case No. 30 of 2017 as per order dated 17.08.2018, but it is not known whether the complainant and her daughter have challenged such order in any higher forum or not. The proceeding under section 125 Cr.P.C. is summary in nature whereas in the trial Court, the complainant and her witnesses are to give detailed evidence relating to the commission of offences

by the petitioner and they will be cross-examined by the defence counsel whereafter the learned trial Court would be in a position to assess whether the evidence adduced by the victim and her witnesses are acceptable or not and whether the offences for such charge was framed against the petitioner are made out or not. At this stage, meticulous examination of the materials available on record is not permissible.

Section 493 of the Indian Penal Code deals with offence for cohabitation caused by a man deceitfully inducing a belief of lawful marriage. The ingredients of such offence is as follows :

- (i) the accused practised deception ;
- (ii) such deceit was to induce the woman to believe that she was lawfully married to him;
- (iii) there was cohabitation or sexual intercourse as a result of the deception.

In the case in hand, the complaint petition makes it very clear that the petitioner made the complainant a belief of his wife, started sexual relationship with her every day. The complainant was also examined during course of investigation and other witnesses have also been examined and the investigating officer found a prima case under sections 417, 493 and 506 of the Indian Penal Code against the petitioner and accordingly, submitted the charge sheet.

Learned counsel for the petitioner placed reliance on

the decision of this Court in the case of **Saurava Barik -Vrs.- Smt. Gouri Kandi @ Gouri, reported in 1993 (Vol.II) Orissa Law Reviews 378** and specifically drew the attention of the Court to paragraph 8, but the factual scenario of the said case is quite different from the case in hand. Therefore, the citation is of no help to the petitioner.

In view of the foregoing discussion and available materials on record, I am of the humble view that there are materials on record, which disclose existence of all the ingredients constituting the offence under sections 417, 493 and 506 of the Indian Penal Code. I find no illegality or impropriety in the impugned order passed by the learned S.D.J.M., Paralakhemundi in G.R. Case No.540 of 2017.

Accordingly, the revision petition being devoid of merit stands dismissed.

The order be communicated to the learned trial Court forthwith.

(S.K. Sahoo)
Judge

PKSahoo