

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLMC No.3084 of 2016**

***Prasant Das @ Prasant Ku. Das &  
others***

....

***Petitioners***

***-versus-***

***State of Orissa***

....

***Opposite Party***

**CORAM:**

**THE JUSTICE S.PUJAHARI**

**ORDER**

**16.02.2022**

**Order**

**No.**

07.

1. This matter is taken up through Hybrid mode.
2. This is an application under Section 482 of Cr.P.C. by the Petitioners seeking quashment of the order dated 17.08.2016 passed by the learned Asst. Sessions Judge-cum-Special Track Court, Bhadrak in S.T. Case No.50/228 of 2016 framing the charge under Sections 368/294/506/34 IPC.
3. The grievance of the Petitioners in this case is that from the materials on record prima facie any offence against the Petitioners does emanate much less the offence in which they have been charged, but the trial court, without sifting the materials on record on proper perspective that sufficient grounds are there presuming that the Petitioners to have committed the offences, proceeded against them and framed the charge under Sections 368/294/506/34 IPC. Therefore, he submits that the charge framed against the Petitioners being without any substance, the same is liable to be quashed.

4. Mr. Dhal, learned Senior Advocate appearing for the Petitioners, taking this Court through the materials on record and also the provision of Section 368 IPC, submits that absolutely no material is there against Prasanta Das @ Prasant Ku. Das (Petitioner No.1) and Sukanta Das @ Sukanta Ku. Das (Petitioner No.2) to proceed under Section 368/34 IPC. So far as Petitioner Nos.3 to 6 are concerned, even if no material is there against any of them as revealed from the statement of the victim, regarding their hurling abusive words to her i.e. victim within any public place so also her evidence does not disclose that they have extended any threat. Hence, they could not have been proceeded with the charge under Sections 294/506/34 IPC by the trial court. But, the trial court in oblivious to the same, having proceeded against the Petitioner Nos.3 to 6, it is stated that even if the charge can be framed on a grave suspicion, but for the same, there must be some materials to satisfy the ingredients of the offence charged and the persons accused of such offences presumed to have committed the same. The presumption cannot be ipsi dixit on the learned trial judge. Therefore, there being no prima facie case, satisfying the ingredients of the offences charged against the Petitioners much less on sifting the materials on hearing the parties, the charges framed against them are liable to be quashed.

5. However, Mr. Pattnaik, learned counsel for the State drawing attention of the Court to the facts, which emanates from the record, submits that the charge can be framed on grave suspicion and that the incriminating materials being available

against the Petitioners in this case, the charge framed against the Petitioners cannot be found fault with. Hence, the impugned order warrants no interference of this Court in exercise of the power under Section 482 Cr.P.C. and as such the same is devoid of merit and liable to be quashed.

6. On perusal of the materials available on record, it appears that the victim was kidnapped by one Ratikanta and she was kept in a rented house wherefrom she rescued by Petitioner Nos.1 and 2 and kept nearby railway station where maternal uncle of the victim came being called. There he stated that victim's engagement was already fixed but since she was kidnapped on the said date, it could not materialize and as such her marriage had broken. Therefore, in such circumstance, it would be better to give marriage to Ratikanta with the victim and they agreed and handed over the victim to the uncle of the victim. However, the same having not been materialized, when the uncle along with the family members of the victim went to the house of Petitioners 3 to 6, they stated to have abused and assaulted. But conspicuously the statement of the uncle of the victim, who stated to have accompanied the victim, does not form a part of the record and he has not been examined in this case nor he has been cited as a witness in the charge sheet filed.

7. On consideration of the aforesaid facts and the submission made, so also the ingredients of Section 368 IPC, it cannot be said that Petitioners 1 and 2 had kept the victim in confinement knowing well that she had been kidnapped by

Ratikanta. Therefore, prima facie the ingredients of the aforesaid offence being not available in the record as well as charge under Section 506 IPC is not made out from the statement of the victim, when she had been to the house of the Petitioners 3 to 6 so also the abuse hurled in filthy language stated to have been committed inside the house but not in any of the public place, this Court is of the view that the trial court could not have framed the charge against the Petitioners for the aforesaid offences. Therefore, the charge framed against them stands quashed and they stand discharged in the aforesaid case.

8. However, it is made clear that during the examination of the witnesses, if the court finds that any material comes to light against the Petitioners, there is no impediment on the part of the trial court to array them as accused in exercise of the power under Section 319 Cr.P.C notwithstanding the aforesaid order of this Court.

9. With the aforesaid order, this Criminal Misc. Case stands disposed of being allowed.

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

**(S. Pujahari)**  
**Judge**