

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.332 of 2022

1. Kamala Das **Petitioners**
2. Nirmala Das @ Rina Das

Mr. G. Mohanty, Advocate

-versus-

1. State of Odisha
2. Subhadra Biswal **Opp. Parties**

Mr. Rajesh Tripathy
Addl. Standing Counsel

CORAM:
JUSTICE S.K. SAHOO

ORDER
13.09.2022

Order No.

01. This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Heard learned counsel for the petitioners and learned counsel for the State.

This revision petition has been filed by the petitioners Kamala Das and Nirmala Das @ Rina Das in challenging the order dated 29.06.2022 passed in Special G.R. Case No.67 of 2021 by the Adhoc Additional Sessions Judge, FTSC (POCSO), Jagatsinghpur in allowing the discharge petition filed by them under section 227 of Cr.P.C. in part and in holding that though there is no prima facie case found

under section 506/34 of the Indian Penal Code but the petitioners have committed the offences under sections 294/323/34 of the Indian Penal Code. The said case arises out of Balikuda P.S. Case No.350 of 2021.

Learned counsel for the petitioners submitted that the first information report was lodged by the victim before the Inspector in-charge of Balikuda police station and accordingly, a case under sections 376(2)(n)/506/323/34 of the Indian Penal Code and section 6 of the POCSO Act was registered against Asutosh Das, Smruti Ranjan Das and the family members of those two accused persons.

On completion of investigation, charge sheet was submitted and so far as the petitioners are concerned, they were charge sheeted under sections 506/323/294/34 of the Indian Penal Code whereas the co-accused Asutosh Das was charge sheeted under sections 376(3)/376(2)(n) of the Indian Penal Code and section 4(2) of the POCSO Act.

Learned counsel for the petitioners further submitted that though the learned trial Court came to hold that there is no prima facie case for the offence under section 506/34 of the Indian Penal Code but found that the petitioners have committed offences under sections 294/323/34 of the Indian Penal Code and accordingly, allowed the discharge petition in part

and posted the case for framing of the charges. Learned counsel further submitted referring to the statement of the witness, namely, Sobha Rani Biswal that when coming to know about the physical relationship between the main accused and the victim, they went to complain in the house of the petitioners and the family members of the main accused abused them and also drove them out of the house. Learned counsel further submitted that on the basis of such statement, it cannot be said that the ingredients of the offences under sections 294/323 of the Indian Penal Code are attracted against the two petitioners who are ladies and therefore, the impugned order should be quashed.

Learned counsel for the State, on the other hand, submitted that in the first information report, it has been mentioned that the family members of the main accused drove out the parents of the victim by giving pushes and therefore, the learned trial Court was quite justified in rejecting the discharge petition.

In order to attract the ingredients of the offence under section 294 of the Indian Penal Code, it is necessary that the accused must have done some obscene act in a public place or sung, recited or uttered obscene song or word in or near public place and it must have caused annoyance to the others. A vague or general statement that the accused

showered obscene words is not enough to constitute an offence under section 294 of the Indian Penal Code. It is necessary to state the words uttered by the accused to constitute the offence. Where the obscene words used by the accused are not set out in the statements of the witnesses, it would not be proper to ask the accused to face trial for such offence. Except stating that the family members abused the parents of the victim, there is no specific allegation against any of the petitioners whether they participated in such act or not and more particularly what are the words used to the parents of the victim. Similarly, there is no specific material as to who gave the pushes for attracting the ingredients of the offence under section 323 of the Indian Penal Code. There must be material on record to show that 'hurt' as defined under section 319 of the Indian Penal Code has been caused which includes bodily pain, disease or infirmity.

In absence of any such clinching materials on record and the surrounding circumstances under which the offences alleged to have been committed, I am of the view that the learned trial Court was not justified in allowing the discharge petition filed by the petitioners only in part. The offences are not made out as alleged against them.

Accordingly, the revision petition is allowed.

The petitioners are discharged from the charge

sheet offences.

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

(S.K. Sahoo)
Judge

RKM

