

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3602 of 2015

Najma Banu *Petitioner*
-versus-
State of Orissa and another *Opposite Parties*

CORAM: JUSTICE S.PUJAHARI

ORDER
16.08.2022

Order
No.

03.

1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order dated 18th September, 2014 passed by the learned S.D.J.M., Nabarangpur in G.R. Case No.555 of 2014, taking cognizance of the offences under Sections 494, 498(A), 323, 294, 506 and 406 of the I.P.C. read with Section 4 of the Dowry Prohibition Act.
3. Heard the learned counsel for the Petitioner and the learned counsel for the State-Opposite Party No.1.
4. From the prosecution allegation, it reveals that the present Petitioner during the subsistence of marriage of Sunil Khura with Banita Khura (Opposite Party No.2-Complainant), the said Banita Khura was stated to have been meted with cruelty by her husband and in-laws for non-fulfillment of their

illegal demand of dowry. However, thereafter Sunil Khura brought the present Petitioner and kept as his wife and when the Complainant made protest of the same, said Sunil Khura and his family members including the present Petitioner stated to have extended threat to her and meted her with cruelty.

5. It is stated by the learned counsel for the Petitioner that the Petitioner has not been implicated in a case under Section 494 of I.P.C. However, she alleged to have committed the offence under Section 498(A) of I.P.C. As such, the order of cognizance is liable to be quashed.

6. It is fairly submitted by the learned counsel for the State that there is no material to show that the Petitioner to have married the husband of the complainant/victim, though allegedly she came and stayed with the husband of the complainant/victim.

7. The materials on record do not reveal that the Petitioner stated to have married to the husband of the Complainant as stated. In the absence of the same, the Petitioner may be concubine of Sunil Khura but not his relation. Therefore, when the Petitioner is not the relation of the husband of the Complainant, the implication of the Petitioner under Section 498(A) of I.P.C. read with Section 34 of the I.P.C., as allegedly she meted the complainant/victim with cruelty, is misconceived. The same is moreso as prima facie no offence under Section 494 of I.P.C. is there to show that during the

subsistence of marriage of the complainant/victim with her husband, she married the Petitioner.

8. In such premises, this Court allow the Criminal Misc. Case. Consequently, quash the impugned order cognizance and the proceeding qua the Petitioner in G.R. Case No.555 of 2014. The learned S.D.J.M., Nabarangpur or the Court in seisin over the matter shall on receipt of this order/production of the certified copy of this order, close the proceeding in the aforesaid case in compliance to this order.

9. However, during the trial any materials are brought to the record indicating the indictment of the Petitioner in any offence, this order should not stand on the way of the trial court to proceed against the Petitioner, as the same is the settled position of law.

(S.Pujahari)
Judge

DA