

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.4461 of 2015

Mihir Ketan Behera

• • • •

Petitioner

versus-

State of Orissa and another

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Opposite Parties

CORAM: JUSTICE S. PUJAHARI

ORDER

05.07.2022

Order

No.

07.

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 20th July, 2015 passed by the learned S.D.J.M.(S), Cuttack in G.R. Case No.516 of 2015, taking cognizance of the offences under Sections 498(A) 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. It appears that notice was sent to the Opposite Party No.2- Informant through registered post with A.D., which has returned unserved with an endorsement 'Refused'. Hence, the same be treated as sufficient.
5. It also appears that the aforesaid case arises out of a marital discord between the Petitioner and Opposite Party No.2. The Petitioner is the husband of the Opposite Party No.2-wife (Informant). The Petitioner and Opposite Party No.2 are now living separately and their marriage has already been dissolved by a decree of mutual divorce vide

order dated 24th July, 2015 passed by the learned Judge, Family Court, Kendrapara in Civil Proceeding No.199 of 2015 where Petitioner has paid a sum of Rs.8,60,000/- in the shape of Bank Draft to the Opposite Party No.2 towards her permanent alimony and maintenance and also both of them agreed to withdraw all the disputes. The criminal case initiated in the year 2015.

6. It is stated by the learned counsel for the Petitioner that since Petitioner and Opposite Party No.2 have already snapped their matrimonial relationship vide order dated 24th July, 2015 passed by the learned Judge, Family Court, Kendrapara in Civil Proceeding No.199 of 2015 and the Petitioner has paid an amount of Rs.8,60,000/- in the shape of Bank Draft to the Opposite Party No.2 as permanent alimony and maintenance as per direction of the learned Judge, Family Court, Kendrapara, the aforesaid proceeding may be quashed as no useful purpose is going to be served to continue with the same inasmuch as hereinafter there is bleak chance of conviction.

7. Learned counsel for the State, however, submits that in the absence of the Opposite Party No.2-wife, the contention of the learned counsel for the Petitioner is devoid of merit.

8. But the Petitioner has filed certified copy of the petition under Section 13(B) of the Hindu Marriage Act to draw a decree of mutual divorce indicating the parties have agreed to withdraw the criminal cases initiated at their behest.

9. It appears that in this case though the Opposite Party No.2-wife had agreed to settle all the disputes in a proceeding under Section 13-B of the Hindu Marriage Act, but thereafter she played hide and seek and not appearing in this case. In the case of ***Ruchi Agarwal vrs.***

Amit Kumar Agrawal and others, reported in (2005) 3 SCC 299 and also in the case of *Mohd. Shamim and others vrs. Nahid Begum (Smt.) and another*, reported in (2005) 3 SCC 302, wherein the case of *Ruchi Agarwal* has been followed, the Apex Court in a similar facts and situation have quashed the criminal proceeding. Therefore, this Court is of the view that in such circumstances, allegedly the criminal prosecution initiated by the Opposite Party No.2 against the Petitioner vide the aforesaid case would be an abuse of the process of the court.

10. I would, therefore, allow this Criminal Misc. Case and quash the impugned order of cognizance as well as the entire criminal prosecution launched against the Petitioner vide G.R. Case No.516 of 2015 on the file of the learned S.D.J.M.(S), Cuttack. The court concerned shall do well to comply with this order on production of the certified copy of this order.

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

(S. Pujahari)
Judge

DA