

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.5671 of 2014

Soumendra Singh & others* *Petitioners

-versus-

State of Odisha & another* *Opposite Parties

CORAM: JUSTICE S.PUJAHARI

ORDER

27.06.2022

Order
No.

06.

1. This matter is taken up through hybrid mode.
2. It appears that notice was issued to Opposite Party No.2 by registered post with A.D. but the A.D. having not been returned, notice to Opposite Party No.2 be treated as sufficient in view of the provisions contained in Section 27 of the General Clauses Act.
3. A memo along with the certified copy of the petition vide C.P No.531 of 2014 along with the order passed therein filed in Court today by the learned counsel for the Petitioners be kept on record.
4. Heard learned counsel for the Petitioners and the learned counsel for the State. None appears for the Opposite Party No.2.
5. This application under Section 482 of Cr.P.C. has been filed by the Petitioners to quash the impugned order dated 29.08.2012 passed by the learned J.M.F.C., Cuttack in G.R. Case

No.298 of 2012 arising out of Cuttack Mahila P.S. Case No.33 of 2012 wherein the learned J.M.F.C. has taken cognizance under Sections 498-A/323/294/506/406/34 IPC and Section 4 of D.P. Act.

6. As it appears the Petitioner No.1 and Opposite Party No.2 have dissolved their marital tie by a mutual decree of divorce passed in C.P No.531 of 2014 under Section 13-B of the Hindu Marriage Act by the learned Judge, Family Court, Cuttack. In the said mutual decree of divorce, one of the terms is that the parties to the said proceeding thereafter shall withdraw connected cases pending in different courts. However, the wife thereafter had not appeared in this case and not cooperated for withdrawal of the same nor made an objection for quashment of the prosecution prayed in this case.

7. No doubt, the aforesaid is a term of the compromise and some of the offences are non-compoundable in nature. But non-compoundability of an offence does not stand on the way of the Court for quashment of the proceeding in appropriate cases in exercise of the power under Section 482 Cr.P.C particularly in view of the compromise as held by the apex Court in the case of *Narinder Singh and others vrs. State of Punjab and another*, reported in (2014) 6 SCC 466, so also in the similar facts and circumstances when the wife did not appear, the apex Court in the case of *Ruchi Agarwal vrs. Amit Kumar Agrawal and others* reported in (2005) 3 SCC 299 have quashed the criminal proceeding.

8. In view of the aforesaid authoritative pronouncement of the apex Court, even if the wife has not appeared, this Court is of the view that allowing the criminal prosecution hereinafter against the Petitioners would be an abuse of the process of the Court. Accordingly, this Court, in exercise of the power of this Court under Section 482 of Cr.P.C, quashes the criminal prosecution initiated against the Petitioners at the instance of the Opposite Party No.2 in G.R. Case No.298 of 2012 arising out of Cuttack Mahila P.S. Case No.33 of 2012 pending in the court of learned J.M.F.C., Cuttack. The court in seisin over the matter shall do well to close the proceeding on production of the certified copy of the same.

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