

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2535 of 2021

Ansuman Naik and Others

Petitioners

Mr. N. Swain, Advocate

-Versus-

State of Odisha and Another

.... Opposite Parties

Mr. S. Mishra, ASC

Mr. P.K. Jena, Advocate for O.P. No.2

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

13.12.2022

Order
No.
09.

1. Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for opposite party No.2.
2. Instant petition under Section 482 Cr.P.C. is at the behest of the petitioners for quashing of the impugned order dated 12th March, 2021 under Annexure-4 and consequential order of issuance of process against them in connection with G.R. Case No.1866 of 2020 corresponding to Mahila P.S. Case No.16 of 2020 pending in the file of learned S.D.J.M.(P), Rourkela on the grounds stated therein.
3. A copy of the FIR is at Annexure-1.
4. In fact, opposite party No.2 filed a complaint before the learned court below whereupon Mahila P.S. Case No.16 of 2020 registered under Section 493 IPC and other allied offences and lastly on submission of chargesheet, the learned court below passed the impugned order under Annexure-4.

5. Learned counsel for the petitioners submits that no any offence under Section 493 IPC is made out considering the complaint and materials submitted along with the chargesheet i.e. Annexure-2 and therefore, the learned court below could not have taken cognizance of the said offence under Annexure-4. It is further submitted that if at all any such offence can be alleged against the petitioners and in particular petitioner No.1, it is in respect of an offence punishable under Section 496 IPC. Hence, according to the learned counsel for the petitioners, the impugned order under Annexure-4 is not sustainable in law to the extent and with regard to offence under Section 493 IPC and therefore, it is liable to be interfered with and quashed. While contending so, learned counsel for the petitioners cites a decision of this Court in the case of **Saurav Brik Vrs. Smt. Gouri Kaudi alias Gouri** reported in **1994 CRI. L.J. 440**. Another decision in **Raghunath Padhy Vrs. The State** decided and disposed of on 1st October, 1956 by this Court is placed reliance on by the learned counsel for the petitioners while claiming that an offence under Section 493 IPC is not made out when the allegation is to the effect that the marriage was fraudulently managed.

6. Mr. Mishra, learned counsel for the State on the other hand submits that the learned court below did not commit any error or wrong in taking cognizance of the offences and particularly for an offence under Section 493 IPC and hence, the impugned order under Annexure-4 is not to be disturbed. The learned counsel for opposite party No.2 submits that a brief note along with citations has been submitted and he also contends that in the facts and circumstances of the case an offence under Section 493 IPC is prima facie made out and hence, the impugned order under Annexure-4 is not to be set aside. The limitation for the Court in exercising the inherent jurisdiction under Section 482 Cr.P.C. is highlighted upon by the learned counsel for opposite party No.2 referring to decision

of **State of Haryana and Ors. Vrs. Ch. Bhajan Lal and Others 1992 Suppl. (1) SCC 335**. Considering the FIR and the allegations made therein by opposite party No.2, it is made to appear that she had a divorce with petitioner No.1 in C.P. No.69 of 2019 by judgment dated 16th October, 2019 by the learned Family Court but thereafter by the conduct of the petitioners, he was made to believe to be the legally wedded wife of petitioner No.1 and then the alleged mischief was committed. Regard being had to the nature of allegations revealed from Anenxure-1, the Court is of the view that whether a marriage was stage managed by petitioners or there was no marriage at all but under false impression opposite party No.2 was made to believe as the wife of petitioner No.1 and then there was co-habitation is a matter which remains within the domain of the learned court below for examination. In other words, the Court is of the view that the contention of the learned counsel for the petitioners is required to be gone through by the court below during and in course of trial on receiving evidence for a decision as to if an offence under Section 493 IPC is made out or one under Section 496 IPC as is being claimed.

7. At this juncture, learned counsel for the petitioners submits that if the Court is not inclined to interfere with the impugned order even to the extent involving an offence under Section 493 IPC, liberty should be granted to the petitioners to raise such a ground at the time of framing of charge. The Court is of the view that since such a question is to be examined by the learned court below and by being aware of the settled position of law with regard to exercise of inherent jurisdiction under Section 482 Cr.P.C., the Court is of the view that though no case is made out for interference, however, liberty should be granted to the petitioners to raise above ground while seeking discharge from the offence under Section 493 Cr.P.C.

8. Accordingly, it is ordered.

9. In the result, CRLMC stands disposed of with liberty granted to the petitioners to raise all such grounds including the one taken up at present at the time of framing of charge and in the event any such application so moved by them in connection with G.R. Case No.1866 of 2020 corresponding to Mahila P.S. Case No.16 of 2020, the learned S.D.J.M.(P), Rourkela shall consider the same and pass appropriate orders thereon as per and in accordance with law without being influenced by the any of the observations of the Court made herein above.

10. Urgent certified copy of this order be granted as per rules.

TUDU



(R.K. Pattanaik)
Judge