IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR

CRLREV No.212 of 2024
(CNR No. ODHC010271992024)

Hari Krushna Mahanty .... Petitioner

Mr. Dharanidhar Nayak, Senior Advocate
& Mr. A. Bhuyan, Advocate

-Versus-

State of Odisha .... Opposite Party

Mr. S.K. Brahma, ASC

CORAM:
JUSTICE R.K. PATTANAIK

DATE OF HEARING:04.08.2026
DATE OF JUDGMENT:13.11.2026

1. Instant revision under Section 401 read with Section 397 of the Criminal Procedure Code, 1973 (in short 'the Cr.P.C.') is at the behest of the petitioner assailing the correctness, legality and judicial propriety of the impugned order dated 15th November, 2023 as at Annexure-3 passed in connection with C.T. Case No.07 of 2023 by the learned Additional Sessions Judge-cum-Special Judge, Koraput, whereby, an application under Section 227 Cr.P.C. seeking discharge vis-a-vis the alleged offences was rejected on the grounds inter alia that such decision in the absence of materials on record especially with regard to his marital relationship with the informant found to be absent, hence, such decision is liable to be interfered with and set aside.

2. The informant lodged the FIR on 13th March, 2016 registered as Koraput Town P.S. Case No.48 of 2016 under Sections 498-A, 313, 323 & 506 IPC. The said report revealed the details of the allegations against the petitioner and another accused, who is responsible for having committed the offence under Section 506 IPC. According to the informant, she is a widow having a 10-year-old daughter and the petitioner, after having developed physical relationship, had a marriage with her at a temple. The circumstances under which the alleged marriage took place have also been described in the FIR. It is further alleged therein that after such marriage, the petitioner committed such other mischiefs, the details of which, are also narrated in the FIR. The manner in which the informant was treated by the petitioner after the alleged marriage on 12th December, 2011 is divulged in the report. According to the informant, she was ill-treated, abused and assaulted by the petitioner, who finally drove her out, hence, the FIR was lodged.

3. A copy of the FIR is at Annexure-1 and the record reveals that the petitioner was arrested on 19th March, 2016 and thereafter, was released on bail. Upon closure of investigation, the chargesheet i.e. Annexure-2 was filed against the petitioner and the other accused. Subsequent to the chargesheet filed, the learned S.D.J.M., Koraput took cognizance of the alleged

offences and proceeded with the enquiry. At the stage of framing of charge, the petitioner filed the application under Section 227 Cr.P.C. seeking discharge on the plea that there is no valid marriage between him and the informant and other offences are prima facie not made out but the learned court below was pleased to reject the same vide order dated 15th November, 2023 at Annexure-3.

4. Consequent to the rejection of the plea of discharge of the petitioner, the revision is filed on the following grounds, such as, (i) the order declining discharge is otherwise illegal, perverse and bad in the eyes of law; (ii) the allegations made in the FIR about marriage having taken place between the parties is not established as there is no any material about such marriage, inasmuch as, no scrap of paper has been produced to substantiate the same; (iii) the marriage between the petitioner and the informant was never solemnized, hence, there is no question of any mental cruelty and torture attributed to the former against the latter and mere allegations in that regard without more does not constitute an offence under Section 498-A IPC; (iv) the allegation about abortion more than once is also not established as neither in the FIR nor anywhere details of such abortions have been disclosed and therefore, it is quite improbable to believe the prosecution story; (v) the allegations in the FIR and the

statements recorded under Section 161 Cr.P.C. and Section 164 Cr.P.C. are concocted and a conspiracy hatched by the informant in connivance with the person named, who is the Secretary of a College and professionally, an adversary of the petitioner, hence, he has been entangled and falsely framed; (vi) there is no medical report or any other evidence to substantiate the allegation of abortions of the informant at the instance of the petitioner, hence, no offence under Section 313 IPC is prima facie made out; (vii) similarly the offence under Section 323 IPC is not proved from the materials on record in absence of any evidence of assault and injury received by the informant for the alleged mischief attributed to the petitioner; (viii) the learned court below has adopted a straitjacket formula to frame charges against the petitioner in absence of any prima facie material and only by considering the gravity of the allegations made; (ix) the petitioner did not commit any such mischief but the learned court below failed to evaluate the materials to find out whether the ingredients of the offences exist to make out a case for trial against him even for an offence under Section 506 IPC; and (x) the petitioner had filed CRLMC No.662 of 2018 disposed of on 10th February, 2023 granting him liberty to renew demanding exoneration at the appropriate stage, hence, the application under Section 227 Cr.P.C., however, the

learned court below did not consider and appreciate the materials on record in proper perspective, hence, the impugned order at Annexure-3 deserves to be set aside in the interest of justice.

5. Heard Mr. Nayak, learned Senior Advocate appearing for the petitioner and Mr. Brahma, learned ASC for the State.

6. In support of discharge referring to the FIR and other materials filed along with the chargesheet, Mr. Nayak, learned Senior Advocate would submit that the marriage between the petitioner and the informant has not taken place, inasmuch as, there has been no marriage at all and hence, an offence under Section 498-A IPC is prima facie not made out. It is also argued that no any case under Section 313 IPC is established in absence of any evidence filed along with the chargesheet. Since the marriage is not established between the parties, according to Mr. Nayak, learned Senior Advocate, there is no cruelty committed by the petitioner, hence, declining discharge for the offence under Section 498-A is an erroneous decision of the learned court below. While advancing such an argument, Mr. Nayak, learned Senior Advocate refers to the following case laws, such as, **U. Suvetha Vrs. State By Inspector of Police and another (2009) 6 SCC 757; Santi Deb Berma Vrs. Kanchan Prava Devi (Smt.) 1991 Supp (2) SCC 616; Dr. Aswin V Nair Vrs. State of**

Kerala Represented by Public Prosecutor & others (CRL.MC No.2654 of 2024 of High Court of Kerala decided on 8th July, 2024); **Subhash Hazarika @ Dhan Hazarika Vrs. State of Assam Represented by Additional P.P., Assam** (Crl. Rev.P./89/2013) of the Gauhati High Court dated 3rd June, 2025; **Ankita Jain Vrs. State & Others** of High Court of Delhi dated 20th July, 2023 in Cr. Rev.P. 754 of 2023; **Suku Hansda Vrs. The State of Jharkhand** in Cr. Appeal (SJ) No. 05 of 2004 dated 18th June, 2018; **Rajesh Bhardwaj Vrs. State 2008(101) DRJ 380**; and finally, **Karan Talwar Vrs. State of Tamil Nadu** in SLP(Crl.) No.10736 of 2022 dated 19th December, 2024.

7. On the contrary, Mr. Brahma, learned ASC for the State submits that the learned court below did not err in denying discharge of the petitioner considering the chargesheet and connected materials which prima facie established the commission of the alleged offences by the petitioner. The submission is that the FIR and the evidence collected during investigation do reveal that a marriage has taken place between the parties and thereafter, while staying together, the petitioner committed the alleged mischiefs and hence, claiming that the informant has been subjected to cruelty, the FIR was lodged and it has been finally proved on the filling of the chargesheet. Not only the allegation of mental and physical cruelty is prima facie established

on the filing of the chargesheet, but also the other allegations clearly borne out of the record and therefore, the learned court below did not commit any grave error in rejecting the application under Section 227 Cr.P.C. demanding discharge by the petitioner and therefore, the impugned order at Annexure-3 calls for no interference.

8. Referring to the decision in **U. Suvetha** (supra), it is contended by Mr. Nayak, learned Senior Advocate that the petitioner cannot be said to have committed an offence under Section 498-A IPC even assuming for the sake of argument that a relationship between him and the informant existed at one point of time. In the decision (supra), the Apex Court while considering a case alleging cruelty and whether any such offence under Section 498-A IPC has been committed or otherwise was dealing with a case where the prosecution was directed against persons, who are not related to the husband by blood or marriage or adoption and the question therein was if at all a girl friend or concubine can be criminally prosecuted. In the above decision, it has also been held that living with another woman may be an act of cruelty for the purpose of judicial separation or dissolution of marriage, but it cannot be stretched to such an extent to allege cruelty under Section 498-A IPC. Such a question is not a subject matter herein. Rather, the

petitioner denied any such marital relationship with the informant alleging that there is no valid marriage between them. The primary ground of challenge to the offence under Section 498-A IPC is on the premise that there is no marriage since no any evidence has been collected during investigation to prove the same. In the considered view of the Court, the decision (supra) is not directly applicable to the case at hand as it is based on different set of facts, hence, renders no assistance to Mr. Nayak, learned Senior Advocate for the petitioner.

9. In **Santi Deb Berma** (supra), the offence is of bigamy punishable under Section 494 IPC and therein, the validity of the second marriage was in question to prove whether any such offence has been committed and in that, the Apex Court concluded that in absence of any cogent evidence of a valid marriage, the accused husband cannot be convicted thereunder. Referring to the above decision, Mr. Nayak, learned Senior Advocate is to suggest that for any such relationship, a valid marriage must exist and in absence of the same between the parties, no prima facie case under Section 498-A IPC would be established, the fact which was completely lost sight of by the learned court below. Again, this Court considers the said decision to be inapplicable for the fact that therein the offence is of bigamy under Section 494 IPC and to establish that it has been committed, a valid marriage was required to

be proved so as to criminally prosecute the accused husband. In the instant case, the marriage is alleged by the informant but denied by the petitioner, an issue which is not yet a subject of trial. Whether any such marriage had taken place between the parties claimed by one and denied by the other is a matter of debate and the question is whether at the stage of framing of charge, it can be examined. According to Mr. Nayak, learned Senior Advocate, evidence on record must reveal about a valid marriage between the parties. But as earlier stated, the decision in **Santi Deb Berma** (supra) is of no help to claim that a valid marriage must exist to prosecute the petitioner for offence under Section 498-A IPC.

10. In **Dr. Aswin V Nair** (supra), the Kerala High Court, while exercising inherent power under Section 482 Cr.P.C., quashed the proceeding for an offence under Section 498-A IPC with a conclusion that for prosecution for the alleged offence, there must be valid marital relationship between the accused and the victim. In the case (supra), in absence of legal marriage between the parties, exercising jurisdiction under Section 482 Cr.P.C., the criminal prosecution under Section 498-A IPC was quashed. But, according to the Court, denial of discharge is questioned by the petitioner invoking its revisional jurisdiction and therefore, having regard to the chargesheet and other

material evidence, a demand for discharge is to be examined.

11. In the peculiar fact situation, the Gauhati High Court in **Subhash Hazarika @ Dhan Hazarika** (supra) concluded that an offence under Section 498-A IPC is not made out since the victim was not considered legally wedded wife of the accused. In **Ankita Jain** (supra), in absence of medical documents on record, the allegation of miscarriage and an offence under Section 313 IPC was disbelieved and it was upheld in revision. In **Suku Hansda** (supra), the charge under Section 313 IPC could not be established, hence, it was followed by an acquittal order. The above decision was while considering an appeal against the order of conviction and sentence and not at the stage of framing of charge or while considering the plea of discharge of the accused. Similarly, in **Rajesh Bhardwaj** (supra), the conviction was under Section 313 IPC and therein the sentence was suspended pending disposal of the appeal on a satisfaction arrived at that there is no evidence on record to prove miscarriage or anything related to medical termination of pregnancy. In **Karan Talwar** (supra), however the decision was while considering discharge and it was for an offence under Section 27(b) of the NDPS Act. In the said case, in absence of any other material except confessional statement of the co-accused, discharge was demanded and considering the

same, the Apex Court held and observed that any such confession cannot translate into admissible evidence at the stage of trial and therefore, standing the trial for the accused could be an ordeal and under such circumstances, set aside the order declining discharge by the Madras High Court. The above decision is a case of discharge for an offence under Section 27(b) of the NDPS Act in absence of any other materials except the confessional statement of the co-accused.

12. The question is whether anyone can be dragged into a criminal prosecution under Section 498-A IPC having no marriage proved with the informant, who claims otherwise. For considering the discharge, this Court is of the view that the chargesheet and connected materials are to be looked into to find out and ascertain whether a case for trial is made out. In **State of Tamil Nadu by Inspector of Police Vigilance & Anti-Corruption Vrs. N. Suresh Rajan & others MANU/SC/0011/2014**, the Apex Court held and observed as to in what manner a Court is to evaluate the materials on record while considering discharge or in framing of charge against an accused and concluded that at such a stage, the probative value of the materials cannot be gone into. It is further held therein that at the time of consideration of discharge, a Court cannot act as a mouthpiece of the prosecution or a Post Office and may sift evidence in order to find out

whether or not the allegations made are groundless. It is also held further that at the stage of considering discharge, the Court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the same with a view to ascertain whether the facts emerging therefrom taken at their face value disclosed existence of all the ingredients constituting the alleged offence. It has been observed therein that the probative value of the materials may have to be examined, but the Court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. It has been concluded by the Apex Court in the decision (supra) that what needs to be considered is whether there is ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the Court thinks that the accused might have committed the offence on the basis of the materials on record, it can frame the charge, though for conviction, a conclusion must have to be reached that he committed the offence, inasmuch as, law does not permit a mini-trial at such stage while considering discharge or framing of charge.

13. In **Sheoraj Singh Ahlawat & others Vrs. State of Uttar Pradesh and another (2013) 11 SCC 476**, the Apex Court endorsed the view taken in **Onkar Nath Mishra and others Vrs. State (NCT of Delhi) and**

another (2008]) 2 SCC 561 and concluded that at the stage of framing of charge, the Court is required to evaluate the materials and documents on record with a view to finding out the existence of the ingredients of the offences alleged. The Apex Court in **Union of India Vrs. Prafulla Kumar Samal and another (1979) 3 SCC 4** laid down the following principles, such as, (i) while considering framing of charge or discharge under Section 227 Cr.P.C., a Court is having the power to sift and weigh the evidence for the limited purpose of finding out, whether or not, a prima facie case against the accused has been made out; (ii) whether the materials placed before the Court disclosed grave suspicion against the accused and the same has not been properly explained and in such a situation, the Court would be fully justified in framing the charge and proceeding with the trial; (iii) the test to determine a prima facie case would naturally depend upon the evidence collected and it is difficult to lay down a rule of universal application but by and large, if two views are equally possible, the Court is satisfied that evidence produced while giving rise to some suspicion but not grave suspicion against the accused, it would be within its power to discharge the accused; (iv) while exercising power under Section 227 Cr.P.C., a Court cannot merely act as a Post Office of the prosecution but has to consider the broad probabilities of the case, the total

effect of the evidence and the documents produced, any basic infirmities in the case so on and so forth, however, it does not mean that a roving enquiry is to be held to weigh the evidence as if conducting a trial.

14. Keeping in view the law laid down by the Apex Court discussed hereinabove, this Court is to examine as to whether denial of discharge of the petitioner for the alleged offences is justified. According to this Court, the prosecution under Section 498-A IPC has been challenged based on the absence of valid marriage, but the success depends heavily on the specific nature of the relationship. Historically, a legally valid marriage was considered as a requirement for criminal prosecution for an offence under Section 498-A IPC. In conventional cases, a valid marriage is a pre-requisite for a prosecution under Section 498-A IPC. If a relationship is purely a temporary live-in arrangement or if the marriage is found legally null and void, the accused may claim discharge not being the husband of the woman, who alleged cruelty against him. But in the recent past, the legal position received a transformation with the Apex Court's ruling in **Dr. Lokesh B.H. & others Vrs. State of Karnataka & another 2026 INSC 784**, wherein, a prosecution under Section 498-A IPC is held to include long term live-in relationships that are in the nature of marriage provided there was shared intention to marry the woman. In other words, if a

couple stays for a long period like spouses, a challenge against the prosecution under Section 498-A IPC might fail if a woman can establish that the relationship was entered into with an intention to marry or that, the accused actively induced her to believe that they were legally married or where the parties voluntarily and continuously cohabited, shared a household, maintained domestic arrangements and publicly represented themselves as a couple. It is also to be taken judicial notice of the fact that merely walking out of or abandoning a non-marital relationship or a relationship in the nature of marriage does not fulfill the statutory definition of cruelty where without a formal marriage, a civil remedy lies and not a criminal prosecution under Section 498-A IPC.

15. In **Dr. Lokesh B.H.** (supra), the Apex Court expanded the definition of husband in so far as Section 498-A IPC is concerned and held and observed that it is not confined to someone who is in a legally valid marital life but extends to one, who enters into a marital relationship which is void or voidable as also to a live-in relationship, which bears the attributes of marriage so long as the essential ingredients of cruelty as defined under Section 498-A IPC are satisfied. The conclusion has been summarized therein by the Apex Court to the effect that Section 498-A IPC is held to be applicable even to live-in relationships that qualify as

relationship in the nature of marriage with intent to marry being established as an intrinsic part thereof; live in relationships are protected by Section 498-A IPC and it is stated for clarity that such relationships are related to consenting adults; the proposition of law laid down shall be limited to Section 498-A IPC only and such extended interpretation shall not affect any other provision and at the end, outlined the safeguards against arrest and other factors laid down in **Arnesh Kumar Vrs. State of Bihar & another AIR 2014 SC 2756** to be strictly applied further clarifying that no person in a relationship in the nature of marriage having been accused of committing cruelty against a woman being either the live-in partner in the nature of marriage shall be arrested without preliminary enquiry.

16. With the above discussions referring to the case laws, this Court is to take cognizance of the broad parameters for consideration while dealing with the demand of discharge of an accused. Turning to the facts of the case, on a reading of the FIR, this Court finds that the petitioner developed intimacy with the informant and thereafter, allegedly had a marriage with her on 12th December, 2011. The FIR further discloses that the informant lived along with the petitioner as spouses and such a relationship continued for nearly 4 to 5 years. It is also disclosed that the informant had become pregnant not once but a couple of times and

had allegedly undergone abortion of the same under the circumstances narrated therein. The manner in which the informant was subjected to abuse and assault is also described in the FIR. The claim of the informant is about the marriage and living together and thereafter, the petitioner committed the alleged mischief and even maintaining relationships with other women. Whether there was a valid marriage in the eyes of law is not to be examined threadbare at the stage of enquiry when it is claimed by the informant. If the uncontroverted allegations do make out a case with the claim that the marriage had taken place in the year 2011, the truthfulness or otherwise of the claim is to be considered during trial. Accepting the version of the petitioner at the stage of charge with a plea that there has been no valid marriage is not permissible under law and that too when, the Apex Court in **Dr. Lokesh B.H.** (supra) held that even a live-in relation in the nature of marriage between the parties would invite a criminal prosecution for an offence punishable under Section 498-A IPC. It is not that the parties were in a temporary relationship and parted ways, rather, the informant alleges their marriage and it was preceded by an assurance by the petitioner and after the marriage having taken place at a temple, both lived together under one roof. Having regard to the allegations in the FIR, this Court is of the view that

with any such plea of having no legal marriage, the petitioner cannot escape prosecution under Section 498-A IPC when he and the informant allegedly had a marriage and claimed to have stayed together for quite some time like spouses.

17. As regards the offence under Section 313 IPC, the allegation in the FIR about miscarriage is revealed. An accused can plead for discharge, if there is a total lack of medical evidence or corroboration linking the alleged miscarriage to the actions of the accused. In charges relating to causing a miscarriage, it is not enough to simply allege that a miscarriage took place. The prosecution must establish a direct causal link showing that the miscarriage was the specific result of an injury or act committed by the accused. For absence of corroborative documents, the Courts have repeatedly held that due to want of crucial medical records, such as, ultrasound reports, Medico-Legal Certificates (MLCs), or a doctor's opinion connecting the termination/expulsion of the fetus to an assault, renders a charge of miscarriage groundless. An accused can plead discharge if the Court finds that the charge is baseless or that there is no sufficient ground to proceed against him. Mere oral allegation without medical corroboration often fail to make out a prima facie case. In charges involving a miscarriage or forced termination punishable under Section 313 of the IPC, the law is

clear that prosecution must prove a direct causal link between the accused's overt act and the loss of pregnancy. In **Ankita Jain** (supra), it is held that mere allegations of a miscarriage without supporting medical documents establishing causation thereby failing to make out a prima facie case can justify a discharge. If the prosecution relies solely on vague oral accusations without any medical corroboration or prescriptions showing a medico-legal implication, the defense can argue that a prima facie case is not made out. At the discharge stage, it is to reiterate that a Court does not conduct a full trial or weigh the evidence with mathematical precision; it only checks if the material on record generally accepted reasonably connects the accused to the crime. If the prosecution has strong independent ocular testimony, statements from witnesses, or circumstantial evidence pointing to the commission of the offence (even if direct medical records of the fetus are missing or contested), the Court may still reject the plea of discharge and choose to frame charges. In the case at hand, considering the chargesheet and connected materials, it is not forthcoming as to circumstances leading to the miscarriage with bare minimum evidence. No corroborative medical evidence on miscarriage is on record. No direct materials, ocular or documentary, evidencing miscarriage is revealed except the claim of

the informant. Some foundation shall have to be laid to show that the petitioner was in a way responsible for the alleged miscarriage to frame a charge under Section 313 IPC. Just a casual claim with an allegation of miscarriage is not sufficient to go for a trial for an offence of miscarriage when there is no any evidence except an uncorroborated claim of the victim. This Court is, therefore, inclined to hold that the petitioner's plea for discharge for the offence under Section 313 IPC is justified.

18. The other offences alleged against the petitioner are, however, revealed from the chargesheet and some materials are there to suggest that the petitioner deserves a trial for the charges levelled except for the alleged miscarriage. Even the statement of the informant under Section 164 Cr.P.C. corroborates certain allegations in the FIR. This Court is not inclined to consider additional evidence at the stage of framing of charge and hence, discharge of the accused can only be considered referring to the chargesheet and the connected materials. In fact, the petitioner had moved an application under Section 91 Cr.P.C. before the learned court below for production of some documents and it was declined and the said order was not challenged. On consideration of the materials on record, this Court finally reaches at a logical conclusion that the marriage is alleged by the informant claiming

that it was held in a temple and that she lived with the petitioner under one roof till such time subjected to ill-treatment and desertion and having regard to such allegations clearly revealed from the FIR and the materials filed along with the chargesheet, the demand for discharge cannot be entertained except for the offence under Section 313 IPC. In other words, this Court finds the materials for considering trial of the petitioner for the alleged offences excluding the one of miscarriage and hence, it is ultimately concluded that the learned court below committed error in declining discharge for the offence under Section 313 IPC and not for the other offences, which is, therefore, liable to be interfered with thereby exonerating the petitioner on the charge of miscarriage.

19. Accordingly, it is ordered.

20. In the result, the revision stands partly allowed. As a necessary corollary, the impugned order dated 15th November, 2023 as at Annexure-3 passed in connection with C.T. Case No.07 of 2023 by the learned Additional Sessions Judge-cum-Special Judge, Koraput is hereby set aside to the extent as aforesaid.

(R.K. Pattanaik)
Judge

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