

CRLMC No.4189 of 2009

5. 28.2.2019 Heard learned counsel for the petitioners and learned Addl. Standing Counsel.

Prayer has been made to quash the order dated 13.05.2002 passed in I.C.C. Case No.125 of 2000 pending in the court of learned JMFC (R), Cuttack in taking cognizance U/s. 498-A, 304-B, 302, 306 and 34 of IPC read with Section 4 of D.P. Act.

Learned counsel for the petitioners submits that there is no iota of material against the present accused persons and the husband of the deceased namely Sukanta Hati has already been acquitted in S.T. Case No.615 of 2001 for the same incident reported at Tangi P.S. vide Tangi P.S. Case No.117 of 2000.

From perusal of copy of judgment dated 3.4.2002 of the Addl. District & Sessions Judge, Fast Track Court No.III, Cuttack, it is found that the accused husband-Sukanta Hati faced trial only for offence U/s. 498-A and after trial has been acquitted therefrom.

The above fact has been considered by the learned JMFC(R), Cuttack while taking cognizance on 13.05.2002 in ICC Case No.125 of 2000 to meet the question of double jeopardy.

Further it appears from the record that on 7.9.2018 a report was called for from the District Judge, Cuttack regarding status of the case as interim order dated 18.01.2010 was found to have been vacated. The report dated 20.12.2018 received from the District Judge, Cuttack reveals that N.B.W. issued against the accused persons are not executed.

Having heard learned counsel for the parties and perusing the material on record, I am of the considered view that it cannot be said that the complaint and other material taken into consideration by the learned JMFC (R), Cuttack while taking cognizance, did not disclose the offence as alleged and for that keeping in view the guideline prescribed by the Hon'ble Apex Court in the case of **State of Haryana and Ors. V. Ch. Bhajan Lal and Ors** 1992 *Supp(1)* SCC 335, I am not inclined to exercise inherent jurisdiction under Section 482 Cr.P.C. to quash the order dated 13.05.2002 taking cognizance in I.C.C. Case No.125 of 2000.

It is noteworthy that the accused persons have not honoured the process of the Court, as N.B.Ws. issued against them are pending for execution.

This being the case of 2002 and keeping the observation made by the Hon'ble Apex Court in the case of **Hussain & Anr. v. Union of India** reported in 2017 (5) SCC-702 in view, the lower court is directed to expedite the trial and the petitioners are directed to surrender in the lower Court within one month from today and till then the N.B.Ws. shall not be executed.

With this observation and direction, the CRLMC is disposed of.

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Dr. A.K. Mishra, J.

