

**IN THE COURT OF THE SESSIONS JUDGE, KHURDA AT
BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
Sessions Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 13th Nov. '14.

Crl. Rev. No.83 of 2013.

(Arising out of the order dated 05.11.2013 passed by Ms. A. Pradhan, learned J.M.F.C., Bhubaneswar in G.R. Case No.916 of 2012.)

1. Keshab Chandra Pradhan, aged 62 years,
S/o. Late Bhagyadhar Pradhan.
2. Kumudini Pradhan, aged 53 years,
W/o. Keshab Chandra Pradhan.
Both are of Vill. – Baramunda,
P.O. – Baramunda Colony, P.S. – Khandagiri,
Bhubaneswar, Dist. – Khurda.

... **Petitioners.**

-V e r s u s-

1. State of Odisha, represented by Public Prosecutor.
2. Smita Pradhan, aged 31 years, W/o. Priyanath Pradhan,
D/o. Surendranath Pradhan, At - Plot
No.361/2315/3008,
Behind Techno Engineering School, Aiginia, Patrapada,
P.S. – Khandagiri, Bhubaneswar, Dist. – Khurda.

... **Opp. Parties.**

Counsel :

For Petitioners -- Shri B.K. Pattnaik & Associates.
For O.P. No. 1 -- Shri B.B. Mohanty (P.P. in

charge).

For O.P. No.2 -- Shri L. Mishra & Associates.

Date of argument : 10.11.2014.

Date of order : 13.11.2014.

O R D E R

This revision is directed against the order dated 05.11.2013 passed by the learned J.M.F.C., Bhubaneswar in G.R. Case No.916 of 2012, rejecting the petition to discharge the accused persons.

2. Learned counsel appearing for the petitioners submitted that opposite party No.2 has alleged against the present petitioners, including her husband accused Priyanath Pradhan and in-laws, that they were torturing her, both physically and mentally, on the demand of dowry of Rs.2,00,000/-. She has also alleged that they abused her in filthy language and threatened to kill her. During investigation, witnesses were examined. After due investigation, charge-sheet was submitted. It was contended by learned counsel for the petitioners that there is a divorce proceeding filed by the husband of opposite party No.2 in Family Court, Bhubaneswar and the notice issued therein was received by her. In such circumstances, the learned Court below ought to have discharged the petitioners. According to him, the order of the

one because instead of discussing what are the materials appearing for framing of charge against the accused, she has observed that the allegations are to be decided during trial. Moreover, the impugned order does not disclose what offence has been made out against the accused. Without framing charge, the impugned order has been passed, which, in my opinion, is incorrect and unsustainable in law while disposing of the petition under section 239 of the Code. The learned Court below should have mentioned the category of materials considered by her and reflected the same in the order as to what offence has been prima facie made out against the accused. Thereafter only, she should have proceeded for framing of charge or discharging the accused. Bereft of all these aspects, the impugned order is vulnerable. On the other hand, the learned J.M.F.C., Bhubaneswar has not properly exercised the jurisdiction vested on her and, as such, the impugned order is liable to be set aside. Hence ordered :

O R D E R

The Criminal Revision is allowed on remand and the order dated 05.11.2013 passed by the learned J.M.F.C., Bhubaneswar in G.R. Case No.916 of 2012 is hereby set aside.

The matter is remitted back to the learned J.M.F.C., Bhubaneswar to dispose of the petition filed by the

petitioners under section 239 of the Code afresh in accordance with law within a fortnight from the date of receipt of this order after giving the prosecution and the accused an opportunity again of being heard.

**Sessions Judge, Khurda
at Bhubaneswar.**

13.11.2014.

Dictated, corrected by me and pronounced in the open Court this day the 13th November, 2014.

**Sessions Judge, Khurda
at Bhubaneswar.**

13.11.2014.