

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPCRL No.70 of 2023

Partha Sarathi Das ... **Petitioner**

Mr. P.C. Dash, Advocate

-versus-

State of Orissa & others **Opp. Parties.**

Mrs. Saswata Patnaik,
Additional Government Advocate

CORAM:
JUSTICE SANGAM KUMAR SAHOO
JUSTICE SIBO SANKAR MISHRA

ORDER
14.09.2023

Order No.

04.

This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Heard learned counsel for the petitioner and learned counsel for the State.

As requested by learned counsel for the State, list this matter on 26st of September 2023 in order to enable her to obtain instruction as per order dated 26.06.2023.

If the investigating officer is not a female, one responsible lady police officer shall accompany him and the Superintendent of Police, Balasore shall ensure that the lady police officer goes to interrogate the opposite party no.6 to ascertain whether she is wrongfully confined in the house of her parents or she is voluntarily staying there with her parents, whether any kind of marriage has taken place between her and the petitioner on 19.04.2023 in the presence of their friends, relatives and well-wishers and whether any documentary proof

like photographs or video recording is available in support of marriage.

During the course of argument, it is brought to our notice that a marriage declaration document has been prepared in which both the parties have signed and it was sworn before Mr. A.K. Mohanty, Notary Public, Simulia, Balasore on 19.04.2023. It is mentioned on the top of the document that the first party, i.e. the petitioner married to the second party i.e. the opposite party no.6 on 19.04.2023 in the presence of friends, relatives and well-wishers and place of marriage has also been mentioned. In the second paragraph, it is mentioned that the first party and the second party to the marriage are leading a very happy and peaceful conjugal life after the marriage. There seems to be no legal document or other valid proof of marriage, which is said to be held on 19.04.2023, basing upon which the purported self-declaration of parties was made. Time and again Courts across the country have echoed it in identical voice that Notaries are neither authorized to issue certificates of marriage nor they are legally entitled to notarize any signed declaration of marriage, which is apparently beyond the scope of their functions prescribed under section 8 of the Notaries Act, 1952 (Act no.53 of 1952).

Noticing such illegal practice by the Notaries, a Division Bench of this Court in the case of **Rohit Kumar Behera –Vrs.- State of Orissa reported in (2012) 2 ILR-CUT 395** had held as follows:

“6. As some Notaries had adopted a self innovated format by issuing authenticated certificate of Marriage purported to be in pursuance of Rules 11(1) and 16 of the Rules, 1956, the Law Department on 18.03.2009 had issued a letter vide Letter No. III-1-7/07 3921/L directing all the Notaries across the State not to issue Marriage Certificate which is

not a function of the Notary under Section 8(1) of the Act, 1952.

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17. The functions and transactions of business by Notary as envisaged in Section 8 of the Act, 1952 and Rules, 1956 respectively cannot be done in a routine manner without application of mind; otherwise the very purpose of enacting Section 8 of the Act, 1952 and Rule 11(8) of the Rules, 1956 would be frustrated because sanctity is attached to the certificate of the Notary. Thus, Section 8 of the Act, 1952 and Rule 11(8) of the Rules, 1956 cast an obligation on Notary to apply his mind while discharging his notarial functions and transactions of business.

18. Notaries are appointed for authentication of certificates/documents. Documents duly notarized by the Notaries are accepted to be genuine documents in absence of any other material. Certificates duly authenticated by the Notaries are presented before different authorities for various purposes. It is very much necessary that before authenticating any document by putting his signature and Notarial seal, the Notary should ensure that the document is a genuine one. Sometimes, it is found that power given to a Notary is misused. Therefore, it is necessary to regulate the work of the Notaries."

In the case of **Ramakanta Nayak -Vrs.- Itishree Mohapatra reported in (2017) SCC OnLine Ori 219**, while this Court was adjudicating a revision petition filed against the order of maintenance by Family Court, the marriage certificate issued by a Notary was placed before it and therein, this Court had again reminded the position of law declared by **Rohit Kumar Behera** (supra) and denied to accept such certificate

issued by the Notary.

More recently, the Madhya Pradesh High Court in the case of **Mukesh –Vrs.- The State of M.P.** [M.Cr.C. No. 44184 of 2020, decided on 31.12.2020], after being made cognizant of the aforesaid illegal practice by the Notaries, has directed the Principal Secretary, Department of Law, Government of Madhya Pradesh to issue necessary directions to restrain the Notaries from issuing marriage certificates. The Court, while taking serious note of such unlawful practice, has held as follows:

“The job of the Notary is defined under the Notary Act. He is not supposed to perform the marriage by executing documents. Had he properly guided and refused to execute the marriage agreement to the complainant, then the present offence would not have been committed. This Court is repeatedly receiving the cases of forged marriage performed by the Notary, therefore, the Law Department of the State is required to look into these matters as to how the Notaries and Oath Commissioners are involving themselves in executing the document in respect of the marriage, divorce, etc, which are not permissible under the law. Neither the Notary is authorised to perform the marriage nor competent to execute the divorce deed. Therefore, strict guidelines are required to be issued to the Notaries and oath commissioners for not executing such type of deed, failing which their licence would be terminated. Let a copy of this order be sent to the Principal Secretary, Law Department of State of M.P. For taking action in the matter.”

Despite such authoritative pronouncements, this Court is vexed to observe that the Notaries are not abstaining

