

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.12 of 2022

Anil Kumar Mohapatra

.... ***Petitioner***
Mr. D.Samal, Advocate

-versus-

State of Odisha and another

.... ***Opposite Parties***
Mr. K.Pradhan, Advocate for O.P.No.2

**CORAM:
JUSTICE B. P. ROUTRAY**

ORDER
28.06.2022

Order No.

4.

1. The Petitioner has prayed for quashing of the Criminal Proceeding in Special POCSO Case No.54 of 2016 arising out of Banarpal P.S.Case No.76 of 2016 pending in the court of the learned ADJ-cum-Special Judge, POCSO, Angul for alleged commission of offences under section 363, 376(2)(n) of the IPC and section 4/6 of the POCSO Act.

2. The F.I.R. was lodged on 23rd May, 2016 by the father of the present Opposite Party No.2, the victim girl, alleging that the Petitioner kidnapped his daughter. Subsequently in course of investigation, the victim girl (O.P.No.2) was rescued and

produced before the Court. Her statement was recorded under Section 164 Cr.P.C., wherein she stated that she went with the Petitioner out of her own volition as she was in love relationship with the Petitioner. She further stated that her father-Informant used to assault her by taking liquor and had fixed her marriage with one of his friends, who had four children. Opposite Party No.2 did not agree to go with her parents and as such was left in the custody of Child Welfare Committee, Angul.

3. In the contents of the F.I.R., it is mentioned that Opposite Party No.2 was aged about 16 years 10 months on the date of lodging of the F.I.R., as per the allegations of the father-Informant. But the victim girl stated her age about twenty years before the learned Magistrate while recording her statement under section 164 Cr.P.C.

4. The case of the Petitioner is that he and Opposite Party No.2 were in love relationship and in the meantime have married and out of their wedlock, one female child is born on 1st June, 2017. So stating the entire allegations against him to be false, it is prayed to quash the criminal proceeding since both of them are staying happily leading their conjugal life as husband and wife. Opposite Party No.2 has stated by filing a separate affidavit that

the Petitioner is her husband with whom she went on her own volition and her father has made all false and concocted allegations against her husband, for which their matrimonial life is affected. Due to such false allegations made by her father, they are suffering a lot and in the meantime she has been blessed with a female child out of their wedlock.

5. Opposite Party No.2 has further stated in her affidavit that she does not want to proceed with the case against the Petitioner and she want to maintain a peaceful life with the Petitioner who is her husband.

6. From the above narration of facts, it is clear that Opposite Party No.2 is a major girl on the date of filing of her affidavit dated 18th April, 2022, even if her age is considered to be 16 years 10 months on the date of lodging the F.I.R. as per allegations. She is aged about 25 years now as stated by her in the affidavit and thus she has the right to choose her independent life. When the victim in respect of whom rape and sexual assault is alleged, denies the same through affidavit and speaks that the alleged accused is her husband and they are staying as husband and wife and out of their wedlock one female child is born, no fruitful purpose is seen to be resulted by continuance of the

criminal proceeding against the Petitioner. The chances of getting success in the prosecution case against the Petitioner becomes very remote and bleak in the given circumstances, particularly when both parties are admitting that they are residing as husband and wife for more than last five years. Therefore, further continuance of criminal proceeding against the Petitioner would be an abuse of process and as such the same is liable to be quashed.

7. Resultantly, the CRLMC is allowed and the Criminal Proceeding against the Petitioner in Special POCSO Case No.54 of 2016 arising out of Banarpal P.S.Case No.76 of 2016 pending in the court of the learned ADJ-cum-Special Judge, POCSO, Angul is quashed.

(B.P. Routray)
Judge