

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2281 of 2011

Pramod Banka.

....

Petitioner

-versus-

State of Odisha.

....

Opposite Party

CORAM: JUSTICE S.PUJAHARI

ORDER

21.03.2022

Order No.

- 05.
1. This matter is taken up through Hybrid mode.
 2. The petitioner in this application under Section 482 of the Code of Criminal Procedure (for short “Cr.P.C.”) has prayed for quashing of the order dated 23.06.2011 passed by the learned S.D.J.M., Kuchinda in G.R. Case No.109 of 2007 taking cognizance of the offence under Section 379/34 of IPC against him.
 3. Heard the learned counsel for the petitioner and the learned counsel for the State.
 4. Learned counsel for the petitioner submits that the petitioner was never present at the spot, but on the basis of confession of the co-accused before the police, the petitioner

has been indicted in this case. Since such confession of the co-accused before the police is no evidence in the eye of law, the impugned order of cognizance as well as the consequential proceeding may be quashed against the petitioner.

5. Learned counsel for the State, however, opposes the aforesaid contention of the learned counsel for the petitioner, but does not dispute that implication of the petitioner is only on the basis of confession of the co-accused before the police.

6. Considering the facts and circumstances of the case, so also in view of the law laid down by the Apex Court in the case of *R.P. Kapur vrs. State of Punjab*, reported in 1960 AIR 862, this Court is of the view that as there shall be bleak chance of conviction in this case on such evidence, as such, the continuance of the prosecution shall be an abuse of the process of the Court.

7. I would, therefore, allow this Criminal Misc. Case application, quash the impugned order and the consequential proceeding against the petitioner. The trial court shall do well to comply with this order on production of the certified copy of this order.

8. Urgent certified copy of this order be granted on proper application.

(S. Pujahari)
Judge

MRS