

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2400 of 2017

Kanha Bhoi @ Sabat

....

Petitioner

-versus-

State of Orissa & another

....

Opposite Parties

CORAM: JUSTICE S.PUJAHARI

ORDER

14.02.2022

Order
No.

03.

1. This matter is taken up through Hybrid mode.
2. The Petitioner has come to this Court for quashment of the criminal proceeding initiated against him in connection with Loisingha P.S. Case No.90 of 2012 corresponding to G.R. Case No.90 of 2012 pending in the court of J.M.F.C., Loisingha inasmuch as, according to the Petitioner, he having no role to play as he was a child below 7 years of age when he was shown as a son of a Scheduled Tribe person by his natural parents by a deed of adoption, therefore, even though Scheduled Tribe Certificate subsequently obtained which has been cancelled by the High Power Committee, the Petitioner cannot be attributed

with any criminality for such act. In such premises, he submits that the proceeding be quashed qua the Petitioner.

3. Learned counsel for the State, however, submits that the Petitioner being a beneficiary of the same, he could not escape from the liability.

4. It is not disputed by the learned counsel for the State that the Petitioner at the time of adoption was child below 7 years of age.

5. In view of such admitted fact and the provisions contained in Section 82 of the I.P.C. which speaks that under the age of 7 years, no infant can be guilty of a crime, by presumption of law, doli incapax, as he is not endowed with any discretion to commit a crime. Therefore, this Court is of the view that prosecution launched against the Petitioner for obtaining a Scheduled Caste Certificate on the basis of adoption deed though his natural parent does not belong to Scheduled Tribe is unsustainable.

6. I would, therefore, allow this Criminal Misc. Case and quash the criminal prosecution launched against the Petitioner vide G.R. Case No.90 of 2012, corresponding to Loisingha P.S. Case No.90 of 2012. The trial court shall do well to comply with this order on production of the certified copy of this order.

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

(S. Pujahari)
Judge

PKS/DA

