

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1968 of 2011

Bijaya Sa @ Vijay Prasad Shah and Petitioners
another

-versus-

State of Orissa and another Opposite Parties

CORAM: JUSTICE S. PUJAHARI

ORDER
27.07.2022

Order
No.

09. 1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioners with a prayer to quash the proceeding in Jharsuguda P.S. Case No.119 of 2010, corresponding to G.R. Case No.543 of 2010, pending in the file of learned S.D.J.M., Jharsuguda.
3. Heard the learned counsel for the Petitioners and Mr. S.S. Mohapatra, learned counsel appearing for the State-Opposite Party No.1.
4. From the materials available on record, it would go to show that the Petitioners, who are victim and accused in this case, have sought for quashment of the F.I.R.. The F.I.R. lodged at the instance of the father of the Petitioner No.2-

Victim that the Petitioner No.1-accused had kidnapped her daughter. Pursuant to the said F.I.R., a case was registered as Jharsuguda P.S. Case No.119 of 2010 for alleged commission of offence under Section 363 and 366 of the I.P.C. However, in the meanwhile, as it appears, from the investigation that the victim, who is aged about 17 years, as stated by the learned counsel for the State, on her own volition left with the present Petitioner, so also she married him and living as his wife, as revealed from the report called for from the concerned police station. The said report furnished by the learned counsel for the State along with the photograph, which be kept on record.

5. Taking note of the same, learned counsel for the Petitioner submits that the F.I.R. is liable to be quashed.

6. Neither the learned counsel for the Petitioner nor the learned counsel for the State apprise this Court that charge sheet filed or not.

7. It appears that the Petitioner No.2-Victim has already attained the age of discretion of sexual intercourse. From the aforesaid, it appears that she on her own volition left her guardian and married the Petitioner No.1 and stayed as his wife.

8. The Apex Court in the case of ***Fazle Gaffar Khan and others vrs. State of West Bengal and another***, in Criminal Appeal No.966 of 1999, have held as follows:-

“The appellant faces criminal proceedings on a charge under Section 366 IPC on the allegation that he kidnapped a minor girl. On the basis of the first information report (FIR) the police took up the investigation and submitted a final form. A protest petition being filed by the complainant, the Magistrate treated it as a complaint and took cognizance. The accused moved the High Court under Section 482 Cr.P.C. for quashing of the proceedings. The High Court having refused to quash the proceedings, the present appeal has been filed in this Court. An affidavit of the girl has been filed clearly stating therein that she was married to the appellant-accused. In view of such affidavit, the Court had issued notice pursuant to which the State entered appearance, but the complainant did not make any appearance. In the light of the said affidavit of the girl admitting the marriage between her and the present appellant and the statement made by Ms Indira Jaising, learned Senior Counsel appearing for the appellant that a child has been born, we think it in the interest of justice to quash the criminal proceedings. We, therefore, allow this appeal and direct that the criminal proceedings be quashed.”

9. Taking note of the aforesaid law laid down and the submissions made, especially the fact that the parties are living together as husband and wife and blessed with a child, this Court is of the view that the F.I.R. lodged against the Petitioner is liable to be quashed.

10. Accordingly, this Court allow the Criminal Misc. Case. Consequently the F.I.R. in Jharsuguda P.S. Case No.119 of 2010 and the criminal proceeding in G.R. Case No.543 of 2010 registered in the Court of S.D.J.M., Jharsuguda, if pending therein or any other court presently, shall stands quashed. The IIC of the Jharsuguda Police

Station as well as the trial court shall do well to comply with this order on production of the certified copy of this order.

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

(S. Pujahari)
Judge

DA

