

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.650 of 2012

***Prasant Nayak @ Prasant
Kumar Nayak***

....

Petitioner

-versus-

State of Orissa

....

Opposite Party

CORAM: JUSTICE S.PUJAHARI

ORDER

18.04.2022

**Order
No.**

07.

1. This matter is taken up through Hybrid mode.
2. This application under Section 482 Cr.P.C. has been filed by the Petitioner for quashment of the order dated 18.05.2011 passed by the learned J.M.F.C., Bissumcuttack in G.R. Case No.276 of 2010 wherein the learned J.M.F.C has taken cognizance under Sections 493/417/506 IPC and Section 3(1)(x)(xi) of the SC & ST (PA) Act against him.
3. Heard learned counsel for the Petitioner and the learned counsel for the State.
4. As it appears, the allegation was made that the Petitioner giving an assurance of marriage had sex with the victim regularly and due to their such relationship, the victim became enceinte for five times but her pregnancy was terminated at the instance of the Petitioner. However, subsequently when the victim did not agree to keep sexual relationship with him as he

had not married her as promised, she was assaulted. Hence, FIR was lodged by the victim vide Bissam Cuttack P.S. Case No.107 of 2010. Since Police did not find any material with regard to miscarriage, ultimately submitted the charge sheet under Sections 493/417/506 IPC and Section 3(1)(x)(xii) of the SC & ST (PA) Act.

5. Learned counsel for the Petitioner submits that it was a case of consensual sex as revealed from the materials on record but due to certain reasons the Petitioner subsequently did not agree to the proposal for marriage as such the victim roped in the Petitioner in this false case. Therefore, the court should not have taken cognizance of the aforesaid offence more so when the ingredient of the offence under Section 493 IPC is not attracted.

6. Learned counsel for the State, however, justifies the order of cognizance.

7. On consideration of the facts and the submissions made and after going through the materials available on record, it appears to this Court that the order of cognizance reflects non-application of mind inasmuch as the court being not alive to the ingredients of the certain offence whether prima facie case is made out or not have taken cognizance on the same. Therefore, this Court quashes the impugned order of cognizance and remits the matter back to re-address the question of cognizance taking note of the entirety of the facts and the circumstances as

well as the provision of law and pass necessary order within two months from the date of production of a certified copy of the order.

8. With the aforesaid order, this CRLMC stands disposed of.

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

PKS

(S. Pujahari)
Judge

