

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.806 of 2022

***Bijuli @ Raja @ Sadam Hussein
Khan @ Mallik & others***

....

Petitioners

-versus-

State of Odisha

....

Opposite Party

CORAM: JUSTICE S.PUJAHARI

**ORDER
04.08.2022**

Order No.

05.

1. This matter is taken up through Hybrid mode.
2. Heard learned counsel for the Petitioners and learned counsel for the State.
3. This application under Section 482 of Cr.P.C. has been filed by the Petitioners with a prayer to quash the order dated 15.03.2022 passed by the learned Addl. Ad hoc Sessions Judge, (FT.S.C), Nayagarh in T.R. No.03/14 of 2019/2015. The offence alleged against the Petitioner under Sections 366-A/368/109/376/34 IPC and Section 6 of the POCSO Act.
4. It is submitted by the learned counsel for the Petitioner that the evidence from both the side is closed and the accused statement has been recorded by the court below. When the case was ready for hearing, the prosecution filed a petition under Section 311 Cr.P.C with a prayer to call for the Headmaster of

Sinduria U.G.M.E. School and produce the admission register. The learned trial court allowed the petition filed under Section 311 Cr.P.C. He further submits that to prove the age of the victim, the I.O has seized the admission register from the Nayagarh Praja Mandala Mahila Mahavidyalaya, Nayagarh and the Principal has been examined as P.W.11 and after closure of the evidence, allowing the petition filed by the prosecution is nothing but to patch up the lacuna. Therefore, the impugned order is liable to be quashed.

5. It appears that this is a case under the POCSO Act. The Board of Secondary Education Certificate of the victim stated to be in possession of the Petitioners as such it was not possible on the part of the prosecution to produce such document to prove her age. The victim having taken admission in Class-I in Sinduria U.P. School, the admission register of the said school is very much essential to prove her age. The date of birth is a material piece of evidence to prove that the victim was minor on the date of incident. No material is produced by the defence to contradict that the victim was not a minor on the date of incident. Therefore, this Court is unable to accept the submission of the learned counsel for the Petitioner, as prosecution has filed the petition under Section 311 Cr.P.C. to summon the Headmaster of Sinduria U.G.M.E School to produce the admission register to patch up the lacuna at a belated stage, the trial court could not have allowed the same. Hence, the order impugned on that ground is devoid of merit.

6. Accordingly, this CRLMC filed by the Petitioners being devoid of merit stands dismissed.

(S. Pujahari)
Judge

PKS

