

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2785 of 2016

Abhiram Pradhan @ Abhimanyu Pradhan ***Petitioner***

Mr.H.N.Mohapatra, Advocate

-versus-

State of Orissa & another ***Opp. Parties***
Mr.P.K.Patnaik, AGA

CORAM:

JUSTICE G. SATAPATHY

ORDER

06.12.2022

Order No.

05. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. This application U/S. 482 of Cr.P.C. by the petitioner challenging the criminal proceeding initiated against him pursuant to F.I.R. lodged in Satyabadi P.S. Case No. 17 of 2009 corresponding to G.R. Case No. 245 of 2009 of the Court of learned S.D.J.M., Puri including the order taking cognizance for offence U/Ss. 376/506 of IPC.
3. The short facts involved in this case are that the victim lodged an F.I.R. on 18.02.2009 alleging therein against the petitioner for forcibly committing rape upon her on 15.02.2009 at about 8.30 P.M. in the night and pursuant to such FIR, the allegation of the victim was investigated into, resulting in submission of charge sheet against the petitioner for offence U/Ss. 376/506 of IPC under which cognizance was taken by the learned S.D.J.M., Puri by way of an order passed on 01.08.2012 in the aforesaid case, where after, the petitioner has approached this Court by

way of an application U/S. 482 of Cr.P.C. to quash the criminal proceeding by subsequently filing a copy of affidavit of the victim wherein victim has supported to quash the criminal proceeding against the petitioner.

4. In the course of hearing, learned counsel for the petitioner by referring to the affidavit of the victim submits that the victim has already married and she is maintaining a happy and blissful conjugal life being blessed with a child and thereby, the victim does not want to proceed against the petitioner. It is also alternatively submitted that the petitioner may be granted liberty to raise all those points at the appropriate stage of the criminal proceeding, in case the criminal proceeding is not quashed against the petitioner.

5. Mr.P.K.Pattnaik, learned Addl. Government Advocate submits that the FIR was lodged against the petitioner way back in the year 2009 and charge sheet was submitted against the petitioner in the year 2013 by showing the petitioner as an absconder which itself shows the conduct of the petitioner and thereby, the offences being serious and heinous in nature, the criminal proceeding may not be quashed merely on the basis of an affidavit of the victim.

6. Indisputably the petitioner has been charge sheeted for offence U/Ss. 376/506 of IPC showing him as an absconder and accordingly, the learned S.D.J.M., Puri by his order passed on 01.08.2012 in G.R. Case No. 245 of 2009 has directed for issuance of N.B.W. against the petitioner while taking cognizance of offences for aforesaid sections of

IPC. Besides, the I.O. while submitting charge sheet against the petitioner has stated that despite sincere steps, the petitioner could not be arrested, and N.B.W. is pending against the petitioner for execution. On coming back to the allegation as it appears from the FIR that the petitioner was alleged to have committed rape upon the victim in the year 2009 but till today he is able to avoid the process of law. No doubt an affidavit stated to have been sworn in by the victim has been filed in this case on 02.11.2016 but nowhere in such affidavit it has been averred that the allegations are untrue, rather it has been averred therein that the victim was in love with the petitioner and there was marriage proposal between them but the said marriage proposal was withdrawn from the side of the petitioner and thereby, FIR was lodged by the victim and the victim subsequently got married to another person and maintaining a married life and the circumstance does not warrant her to disclose the fact to her husband and in-laws which will ruin her marital life. No doubt such an affidavit is available on record being filed on 3rd November, 2016 but no one has appeared on behalf of the victim. Further, law is very well settled that quashing of offences or criminal proceeding on the ground of settlement between an offender and victim is not the same thing as compounding of offence and the power to quash a criminal proceeding by the High Court in exercise of its inherent jurisdiction is distinct and different from the powers given to a criminal Court for compounding of offences. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc. cannot be fittingly quashed even though the victim or victim's family and the

offender have settled the dispute and such offences are not private in nature and have serious impact on society as held by the Apex Court in ***Gian Singh Vrs. State of Punjab; (2012) 10 SCC 303.***

7. In view of the facts and law discussed hereinabove, especially when the petitioner has been charge sheeted for offence U/Ss. 376/506 of IPC and that too, showing him as an absconder, this Court does not find any error apparent on the face of order taking cognizance which was being passed by learned S.D.J.M., Puri on sound application of law and thereby, the criminal proceeding against the petitioner cannot and shall not be quashed.

In the result, the CRLMC is dismissed on contest but in the circumstances without any costs.

(***G. Satapathy***)
Judge

Kishore

