

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLMC No.2574 of 2017**

***Tukuram Panigrahi***

***..... Petitioner***  
***Mr. J.N. Panda, Advocate***

***-versus-***

***State of Orissa***

***..... Opp. Party***  
***Mr. P.K. Pattnaik, AGA***

**CORAM:**  
**JUSTICE G. SATAPATHY**

**ORDER**  
**17.11.2022**

**Order No.**

- 03.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
  2. This is an application under section 482 of Cr.P.C. praying to set aside the cognizance order passed on 20.07.2017 by learned J.M.F.C., M. Rampur in C.T. Case No. 367 of 2016.
  3. In the course of hearing of the application, Mr. J.N. Panda, learned counsel for the Petitioner submits that the learned Magistrate by the impugned order has taken cognizance of an offence under section 304-A of the IPC and 304-II of the IPC simultaneously, which is erroneous because once cognizance of offence under section 304-A IPC is taken, then cognizance cannot be taken under section 304-II of the IPC simultaneously and vice versa. It is also submitted by him that at best a case under section 304-A of IPC is made out against the Petitioner since the cause of death of the deceased is due to vehicular accident. It is accordingly prayed by him to set aside the impugned order.
  4. Learned counsel for the State by placing the allegations of the FIR submits that the allegation on record discloses the ingredients of

offence under section 304-II of the IPC and a case thereunder is squarely attracted against the Petitioner as the driver of the vehicle-cum-Petitioner was driving the vehicle in an inebriated condition and accordingly, caused the accident with knowledge that the death of the deceased would be inevitable result of such accident and, thereby, the petitioner is squarely liable under section 304-II of the IPC.

5. After having considered the rival submissions upon reference to the allegations on record, cognizance of offences simultaneously under section 304-A of IPC and 304-II of IPC appears to be erroneous, but indisputably alternative charge can be framed thereunder. Since learned counsel for the Petitioner submits that the cognizance order under both the sections are erroneous and at best a case under section 304-A of IPC is attracted against the Petitioner, this Court considers it proper to grant liberty to the petitioner to raise all those points/grounds as are available to him and permissible under law including the point of law raised today at the time of consideration of charge, instead of remitting the matter back to the learned JMFC, M.Rampur to consider the materials on record afresh and pass appropriate order again on the point of cognizance by setting aside the impugned order in view of the facts that the occurrence took place around six years back and in case cognizance would be taken for offence U/S. 304-II of the IPC directing commitment of the case to the Court of Sessions, there would be further delay in the disposal of the case.

6. In the above premises, this Court without adverting to the materials on merit of this case disposes of the CRLMC application granting liberty to the Petitioner to raise all those points/grounds as available to him under law including the point of law raised today by

way of an appropriate application seeking his discharge from this case at the time of consideration of charge and in such event, the Court in seisin of the case would dispose of such application of the petitioner in accordance with law by taking into consideration the facts and law involved in this case.

7. Accordingly, the CRLMC is disposed of.

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

*Priyajit*

