

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1786 of 2012

Kanhu @ Keshab Ch. Das

....

Petitioner
None

-Versus-

State of Odisha and another

....

Opposite Parties
Mr. S.N. Das, ASC

CORAM:
JUSTICE R.K. PATTANAIK

ORDER
04.03.2022

Order No.

04.

1. None appears for the petitioner when the matter is called.
2. Present application under Section 482 Cr.P.C. is filed by the petitioner assailing the order dated 19th May, 2012 passed in S.T. Case No.184 of 2011 by the Adhoc ADJ, FTC-II, Cuttack who rejected the prayer for DNA tests of himself and the child of the victim on the ground that it is essential for proper and effective adjudication of the subject matter in question.
3. As is revealed from the impugned order i.e. Annexure-1, the petitioner had also sought for recall of PW 7 for further cross-examination which was allowed by the learned court below subject to deposit of Rs.2,000/-. However, the prayer of DNA tests of the petitioner as well as the son born to the victim, was refused, which is therefore under challenge.
4. In fact, as per the grounds, the petitioner denied of having any sexual relationship with the victim and that he has been falsely implicated and in so far as the child born to the victim is concerned, his paternity can only be determined by DNA tests

conducted. It has been contended by the petitioner that PW 7, the victim herself stated to have disclosed regarding the paternity of the child claiming that she was impregnated by one Subash Ganda which has been revealed by a witness, namely, PW 12.

5. The learned court below on examination of materials arrived at a logical conclusion that there are sufficient materials by way of evidence available to prove the truth or falsehood of the allegation of rape and therefore, no DNA tests would be necessary. In fact, the learned court below referred to the statement of PW 12 and another witness, namely, PW 13, who also allegedly claimed to have been informed regarding the fact that the victim was pregnant through said Subash Ganda. But then, the learned court below considering the evidence in cross-examination of PW 13 found any such statement to have been denied by him. In fact, learned court below having regard to the prevaricating statement of PW 12 and denial of any such claim by PW 13 during cross-examination concluded that apart from the above, in the facts and circumstances of the case, there was no need to allow the DNA tests to be conducted in respect of the petitioner and the child.

6. In such view of the matter, the Court is of the considered opinion that the learned court below did appreciate the materials on record and rightly rejected the prayer for the DNA tests with the conclusion that the allegation of rape could be proved by other materials available. In this regard, a reference was also made to Section 112 of the Evidence Act while considering the plea for the DNA tests advanced from the side of the petitioner. Having gone through the impugned order dated 19th May, 2012, the Court does not find any legal error with regard to the finding and the

conclusion so reached at by the learned court below and accordingly, it is ordered.

7. In the result, the CRLMC stands dismissed.

(R.K. Pattanaik)
Judge

KC Bisoi

