

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1288 of 2022

Maheswar Sethy @ Sethi

....  
Petitioner  
Mr. A. Mishra, Advocate

-Versus-

State of Odisha

....  
Opposite Party  
Mr. T.K. Praharaj, SC

CORAM:  
MR. JUSTICE R.K. PATTANAİK

ORDER  
24.11.2022

Order  
No.

05.

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. Instant petition under Section 482 Cr.P.C. is filed by the petitioner assailing the order of cognizance and also the entire criminal proceeding corresponding to G.R. Case No.783 of 2006 arising out of Telkoi P.S. Case No.66 of 2006 pending in the file of learned J.M.F.C., Telkoi, Keonjhar on the grounds stated therein.
3. The Court perused the copy of the FIR which is at Annexure-1 whereby Telkoi P.S. Case No.66 was registered in the year 2006 under Sections 493, 417 and 506 IPC.
4. A copy of the chargesheet is at Annexure-2 series and the same is also perused by the Court.
5. Mr. Mishra, learned counsel for the petitioner submits that Anneuxre-1 was lodged on 16<sup>th</sup> September, 2006 and thereafter, in

2007, the petitioner was chargesheeted under Sections 376 and 493 IPC and other allied offences. It is further submitted that in the meantime, victim/informant has expired. It is informed to the Court that the informant died in the year 2012 almost ten years back and till date, there has been no trial commenced. It is the contention of Mr. Mishra, learned counsel for the petitioner that the statement of victim recorded under Section 161 Cr.P.C., in the facts and circumstances of the case, cannot be treated as dying declaration in terms of Section 32 of the Indian Evidence Act and considering the entirety of the case and death of the informant, the criminal proceeding which is pending before the learned court below in G.R. Case No.783 of 2006 should be quashed which is objected to by Mr. Praharaj, learned counsel for the State.

6. Admittedly, the FIR was lodged in 2006 and a year thereafter, the chargesheet was filed. The petitioner stands chargesheeted for offence under Section 376 IPC. The death of the victim is informed to the Court by Mr. Mishra which has taken place almost a decade back. With regard to the contention that the statement under Section 161 Cr.P.C. cannot be treated as the last declaration of the victim admissible under Section 32 of the Indian Evidence Act, Mr. Mishra cites a decision of the Apex Court in **Vinoy D. Nagar Vrs. State of Rajasthan** reported in (2008) OCR SC 141. Without expressing anything on merits, the Court is of the view that such questions shall have to be examined by the learned court below with regard to the admissibility of statement under Section 161 Cr.P.C. vis-a-vis dying declaration keeping in view the law as laid down by the Apex Court in **Vinoy D. Nagar** (supra). In other words, the Court is not inclined to interfere or quash the criminal proceeding pending before the learned J.M.F.C., Telkoi leaving all

the questions open for a decision during and in course of trial by the learned Sessions court, in the event, the case stands committed to it.

7. Accordingly, it is ordered.

8. In the result, CRLMC stands disposed of with a direction to the learned J.M.F.C., Telkoi to ensure commitment of G.R. Case No.783 of 2006 to the Sessions court as soon as possible and in the event of such commitment, the learned Sessions court shall do well to expedite the trial and complete it preferably within a period of six months from the date of receipt of copy of the above order and to examine all such aspects in the light of the settled law.

9. A copy of the aforesaid order be communicated to the learned court below forthwith.

10. Urgent certified copy of this order be granted as per rules.

(R.K. Pattanaik)  
Judge