

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1351 of 2022

Sujit Senapati

.... Petitioners
Mr. Swadha Rath, Advocate

-Versus-

State of Odisha and Another

.... Opposite Parties
Mr. S.S.Mohapatra, ASC for O.P.No.1
Mr. Arabinda Tripathy, Advocate for O.P.No.2

CORAM:
JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT: 19.12.2022

1. The petitioner has challenged the impugned order dated 7th August, 2021 passed in C.T. Case No. 1248 of 2021 corresponding to Rasgovindapur P.S. Case No. 129 of 2021 (currently pending before the court of Sessions Judge, Baripada in S.T. Case No. 65 of 2022) on the ground that the court concerned erroneously took cognizance of the alleged offence under Section 376(2)(n) IPC in absence of any material and therefore, the same is not tenable in law and hence, deserves to be quashed in the interest of justice.

2. As per the pleading on record, the informant/victim lodged a written report on 25th May, 2021 with the allegations made therein describing in detail as to how she was sexually assaulted by the petitioner and further threatened her with dire consequences. After the F.I.R. was lodged, Rasgovindapur P.S. Case No. 129 of 2021 was registered under Section 376(2)(n), 323 & 506 IPC. Finally, the petitioner was chargesheeted under the alleged offences, whereafter, the court of first instance took cognizance of the same which is currently under challenge. As it is

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made to understand, the case has in the meantime been committed to the court of Sessions pending in S.T. Case No. 65 of 2022.

3. Heard Mr. Rath, learned counsel for the petitioner, Mr. Mohapatra, learned ASC for the State and Mr. Tripathy, learned counsel for the opposite party No.2.

4. As per the petitioner, the allegations of opposite party No.2 are outrightly false and improbable, inasmuch as, no offence under Section 376(2)(n) IPC is made out and that apart, the medical evidence is conspicuously absent. It is further claimed that the learned SDJM, Baripada without judicial application of mind took cognizance of the said offence by order dated 7th August, 2021 vide Annexure-3 and thereafter, issued process to him and that apart, the F.I.R. was lodged by the informant-opposite party No.2 with an ulterior motive to harass the petitioner and therefore, considering the decision of the Apex Court in **State of Haryana Vrs. Ch.Bhajanlal** reported in 1992 Supp(1)SCC335, the criminal proceeding should be quashed in exercise of inherent jurisdiction under Section 482 Cr.P.C.

5. Mr. Rath, learned counsel for the petitioner while contending that the learned SDJM, Baripada did not appreciate the evidence on record in its entirety and without judicial application of mind took cognizance of the offence under Section 376(2)(n) IPC besides Sections 323 & 506 IPC cited a decision of this Court in **Gundicha Behera & Another Vrs. State of Orissa (2003) 26 OCR 730**

6. Mr. Mohapatra, learned ASC and Mr. Tripathy, learned counsel for opposite party No.2 justified the impugned order under Annexure-3 and submit that the learned SDJM, Baripada
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did not commit any error or wrong and considering the materials on record rightly took cognizance of the alleged offences.

7. The Court perused the F.I.R. which is at Annexure-1 and also the statement of the informant i.e. Annexure-2 and on a bare reading of the same, it is made to suggest that the victim was subjected to sexual mischief and blackmail in the hands of the petitioner. The details of the incidents happened with the informant have also been described by her in Annexure-2. It is made to appear that the informant was visiting the house of the petitioner to offer tuition to the latter's daughter and during that time, she was allegedly raped. The overt act committed by the petitioner ever since the said incident has also been narrated in Annexure-1 & 2. Prima facie, on a bare reading of Annexure-1 and also Annexure-2, such an offence of sexual mischief by the petitioner is made out. In so far as the learned SDJM, Baripada is concerned, as per Annexure-3, it is made to suggest that before taking cognizance of the alleged offences, the record was perused which presupposed judicial application of mind to the materials on record. In other words, it would not be wrong to suggest that after considering the chargesheet and other materials, the impugned order under Annexure-3 was passed. The decision in **Gundicha Behera** (supra) does not apply to the present case since because the record is shown to have been perused before passing the order of cognizance under Annexure-3, whereas, in the aforesaid decision, there was no such consideration as the learned JMFC after receiving the chargesheet simply proceeded to take cognizance of the offences which included an offence under Section 302 IPC. In fact, in the said case, the cognizance order did not reflect as to if the court perused the chargesheet and connected materials and applying its judicial mind proceeded and

then passed the order of cognizance. However, in the present case, the learned SDJM, Baripada appears to have gone through the case record and then, took cognizance of the alleged offences. Even though the impugned order under Annexure-3 does not disclose the manner in which the materials have been examined after receiving the chargesheet that by itself cannot lead to a conclusion that there has been non-application of juridical mind. It is settled law that an order of cognizance need not be elaborate and to state reasons in detail before taking cognizance of an offence and only to indicate that the court has applied its judicial mind. In the instant case, no doubt the impugned order under Annexure-3 is cryptic but it is suggested that the learned SDJM, Baripada considered the chargesheet and perused the record before summoning the petitioner after taking cognizance of the offences. Hence, the Court does not find any reason or compelling ground to interfere with or disturb the impugned order under Annexure-3.

8. Accordingly, it is ordered.

9. In the result, the CRLMC stands dismissed.

(R.K. Pattanaik)
Judge