

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

**CRLMC No.5076 of 2011**

***Kalpe Sahu***

....

***Petitioner***

***-versus-***

***State of Odisha & another***

....

***Opposite Parties***

**CORAM: JUSTICE S.PUJAHARI**

**ORDER**

**09.05.2022**

**Order**  
**No.**

04.

1. This matter is taken up through Hybrid mode.
2. Heard learned counsel for the Petitioner. None appears for the Opposite Party No.2.
3. This application under Section 482 of Cr.P.C. has been filed by the Petitioner to quash the order dated 01.11.2011 passed by the learned Addl. Sessions Judge (FTC), Bhawanipatna in Criminal Appeal No.20/71 of 2007-2008 wherein the learned Addl. Sessions Judge rejected the petition filed by the accused and the victim for compromise the matter.
4. It appears that the learned C.J.M.-cum-Asst. Sessions Judge, Bhawanipatna in Sessions Case No.24/28 of 2006 vide judgment dated 30.04.2007 convicted the accused under Section 366 IPC and sentenced to undergo R.I. for six years and to pay a fine of Rs.10,000/- in default to undergo further R.I. for 18 months. Being aggrieved by the said order, the accused preferred an appeal before the Addl. Sessions Judge (FTC), Bhawanipatna

in Criminal Appeal No.20/71 of 2007-2008. During pendency of the appeal, the accused filed a petition to compound the offence as the accused and the victim are living together as husband and wife. Since the offence is non-compoundable, the appellate court rejected the petition filed by the Petitioner vide order dated 01.11.2011. Challenging the said order, the Petitioner has filed this petition.

5. It is submitted by the learned counsel for the Petitioner that both the Petitioner and the victim are living husband and wife and they have a small child. Therefore, this Court in exercise of the jurisdiction under Section 482 Cr.P.C should quash the impugned order. In support of his submission, he has cited the decision of the apex Court in the case of **B.S. Joshi and others v. State of Haryana and others** reported in **2003 (II) OLR (SC) 101** and of this Court in the case of **Nikhil v. State** reported in **2003 (II) OLR 61**.

6. Considered the facts and the submissions made. It appears that the Petitioner has already been convicted in an offence under Section 366 IPC. The offence is heinous and serious in nature. The appeal is now pending. The Petitioner as such has compromised the matter after conviction. Hence, in view of the decision of the apex Court in the case of **Narinder Singh and others v. State of Punjab and another**, reported in (2014) 6 SCC 466, this Court is not inclined to quash the impugned order on the ground of compromise made between the

parties more so when the aforesaid decisions cited supra is of no assistance to the Petitioner.

7. Accordingly, this CRLMC stands rejected.

8. However, if the Petitioner in the appeal pending brings the notice of the appellate court that the victim has already married the Petitioner and they are living together as husband and wife, this Court expects the aforesaid aspect shall be taken note of with regard to the quantum of sentence by the appellate court, if the judgment of conviction challenged by the accused in the appellate court is upheld.

9. Urgent certified copy of this order be granted on proper application.

(S. Pujahari)  
Judge

PKS