

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 1675 of 2022

Tuna Parida @ Bapi

....

Petitioner

Mr. Jyotirmaya Sahoo, Advocate

-Versus-

State of Odisha and others

....

Opposite Parties

Mr. S.S. Mohapatra, ASC, OP No.1

Mr. Kedar Chandra Behera, Advocate for OP Nos.2 & 3

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

13.10.2022

Order No.

09.

1. Heard learned counsel for the petitioner, learned counsel for the State and learned counsel appearing for opposite party Nos.2 and 3.

2. Instant petition under Section 482 Cr.P.C. is filed by the petitioner praying for quashing of the order of cognizance dated 5th May, 2016 passed by the learned 4th Additional Sessions Judge, Bhubaneswar in T.R. Case No.8 of 2016 and the entire criminal proceeding on the grounds stated therein.

3. Pursuant to the order of this Court dated 28th September, 2022, petitioner and opposite party Nos.2 and 3 are present in person along with their identity proof. The Court perused the original Aadhar cards of the petitioner as well as opposite party No.3, a photocopy of which has been kept in the record.

4. Mr. J. Sahoo, learned counsel for the petitioner submits that the FIR was lodged by the mother of the victim and admittedly at the time of alleged incident, the victim was a minor but then, it was a case of elopement and in the meantime, the parties have married. Considering the aforesaid facts and also the marriage between the petitioner and opposite party No.3, the criminal proceeding in T.R. No.8 of 2016 should be quashed in the interest of justice. Mr. Sahoo, learned counsel for the petitioner produced a certified copy of the FIR and the same is perused.

5. It is further submitted by Mr. Sahoo, learned counsel for the petitioner that in view of the marriage between the parties, no fruitful purpose would be served in continuance of the criminal proceeding notwithstanding the fact that charge sheet is filed and cognizance has also been taken by the learned court below under Sections 363/366/376(2)(n) IPC and Section 6 of POCSO Act IPC and other offences against the petitioner.

6. The fact of compromise and marriage between the parties has been admitted by opposite party Nos.2 and 3. Opposite party No.2, namely, mother of the victim and the victim girl, namely, opposite party No.3 so also the petitioner are present in person in Court today. On being asked, opposite party No.3, namely, victim submits that she has married the petitioner about 7 years back and blessed with a child.

7. Mr. Mohapatra, learned Additional Standing Counsel for the State submits that the petitioner has been implicated for an offence of rape when she was a minor and accordingly, chargesheet has been filed under Section 376(2)(n) IPC and Section 6 read with 5(L) of POCSO Act against the petitioner. While claiming the parties have married, Mr. Sahoo refers to an affidavit sworn by opposite

party No.2, namely, informant. On a bare reading of the said affidavit filed by the mother of the victim, it appears that the petitioner and opposite party No.3 after marriage are living together as spouses and also blessed with a child.

8. Having regard to the above facts and the nature of allegation and considering the circumstances under which the FIR was lodged and the fact that opposite party No.3 eloped with the petitioner at a time when she was a minor for which opposite party No.2 lodged the FIR and subsequently, charge sheet has been filed under Section 376(2)(n) IPC and Section 6 read with 5(L) of POCSO Act, the Court is of the opinion that in view of the subsequent development, such as, marriage between the petitioner and opposite party No.3 and since both the accused and victim are staying together as husband and wife and blessed with a child, it is a fit case where inherent jurisdiction should be exercised to quash the proceeding. The Court is aware of the decision of the Apex Court in the case of **B.S. Joshi and others Vrs. State of Haryana & Another** reported in (2003) 4 SCC 675, wherein, it has been held that inherent jurisdiction may be exercised taking into account the facts and circumstances particular to a case.

9. Having regard to the settled position of law enunciated in the decision supra, the Court is of the view that since the victim is now major having married the petitioner which took place almost 7 years back and both are living together and leading a happy conjugal life, no worthy purpose would be served to continue the criminal proceeding and such continuance of the proceeding would rather cause hardship and likely to disturb the marital life of the parties. Having said so, the Court is of the view that in the facts and

circumstances of the case, the proceeding in T.R. Case No.8 of 2016 should be quashed. Accordingly, it is ordered.

10. In the result, the CRLMC stands allowed.

11. Consequently, the criminal proceeding in T.R. Case No.8 of 2016 pending in the court of learned 4th Additional Sessions Judge, Bhubaneswar is hereby quashed.

12. Issue urgent certified copy of this order as per rules.

(R.K. Pattanaik)
Judge

U.K.Sahoo

