

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.4415 of 2011

Jaya @ Jayanta Swain

.... Petitioner
Ms. S. Pattanaik, Advocate

-Versus-

State of Odisha and another

.... Opposite Parties
Mr. S. S. Mohapatra, ASC

CORAM:
MR. JUSTICE R.K. PATTANAIAK

ORDER
22.04.2022

Order
No.

04. 1. Heard learned counsel for the petitioner and learned counsel for the State.
2. Instant application under Section 482 Cr.P.C. is at the behest of the petitioner assailing the order of cognizance dated 20th June, 2011 passed in G.R. Case No.33 of 2007 arising out of Baramba P.S. Case No.33 of 2007 on the grounds inter alia that it is not tenable in law and therefore, liable to be quashed in the interest of justice.
3. Ms. Pattanaik, learned counsel for the petitioner submits that for an incident dated 22nd February, 2007, FIR was lodged by the informant alleging therein that his minor daughter aged about 14 years was forcibly kidnapped by the petitioner and has been confined at some unknown place for which they could not trace her out. It is further submitted that after the FIR was lodged, Baramba P.S. Case No.33 of 2007 was registered under Section(s) 363 and

366 read with 34 IPC and finally after charge sheet was filed, the learned court below took cognizance of the alleged offences besides Section 366(A) IPC and thereafter, issued NBW against the petitioner for his production. It is, however, contended that considering the statement of the victim recorded under Section 164 Cr.P.C., a certified copy of which is at Annexure-2, wherein, she has not stated anything adverse against the petitioner and for the fact that the victim herself claimed to have married some other person and blessed with a girl child of seven months old by then, no purpose would be served to continue with the criminal proceeding which is pending before the learned court below and therefore, the order of cognizance dated 20th June, 2011 should be quashed.

4. Learned counsel for the State objected to the contention advanced from the side of the petitioner.

5. The informant lodged the FIR in the year 2007 alleging that his minor daughter was kidnapped by the petitioner with the assistance of two others. The details of the incident stand described in the FIR (Annexure-1). As per the informant, the victim daughter was 14 years of age by the date of alleged occurrence. As it appears, the statement of the victim has been recorded before the Magistrate almost after four years. On a bare reading of the victim's statement under Section 164 Cr.P.C., which is at Annexure-2, it shows that she made no allegation against the petitioner, rather, portrayed a different story and claimed that ten months before, she married to one Banamali Dehuri and also blessed with a girl child and at the same time, claimed of having no acquaintance with the accused. Furthermore, by the time the above statement was recorded, the victim claimed her age to be 21 years.

6. The FIR was registered for offence(s) 363 and 366 IPC and later on, the petitioner was charge sheeted for the above offences along with Section 366(A) IPC. Indeed, the petitioner has not been charged for having committed any sexual mischief vis-à-vis the victim. Long after the alleged incident, on 2nd June, 2011, the victim's statement was recorded. Not only that, the victim in her statement before the Magistrate under Section 164 Cr.P.C. did not allege anything against the petitioner, rather, declined to have any acquaintance with him. As was revealed by the victim, by the year 2011, she had already been married to someone else and was even blessed with a girl child.

7. In so far as the informant, namely, O.P.No.2 is concerned, he has not turned up despite service of notice. In fact, this Court by order dated 9th December, 2011 had directed issuance of notice to O.P.No.2 which is shown to have been served upon him. In other words, O.P.No.2 despite service of notice has not responded.

8. In the above peculiar facts and circumstances of the case, when O.P.No.2 has not appeared despite service of summons and victim made no any allegation against the petitioner instead disclosed the fact about her marriage nearly ten months before at an another place and blessed with a child of seven month old and recording the submission of the learned counsel for the petitioner that the victim most unlikely to prosecute the case anymore, the Court is of the considered view that the order of cognizance under Annexure-1 and the proceeding pending before the learned court below should be quashed so as not to disturb the family life of the victim and accordingly, it is ordered.

9. In the result, application under Section 482 Cr.P.C. stands allowed and consequently, the impugned order under Annexure-3

besides the criminal proceeding in G.R. Case No.33 of 2007 arising out of Baramba P.S. Case No.33 of 2007 is hereby quashed.

10. The CRLMC stands disposed of accordingly.

(R.K. Pattanaik)
Judge

