

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1139 of 2021

Harichandra Mahapatra @ Harish
Chandra Mahapatra

....

Petitioner

Mr. S.J. Mohanty, Advocate

-Versus-

State of Odisha and Another

....

Opposite Parties

Mr. P.K. Rout, AGA

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

21.10.2022

Order
No.
06.

1. Heard learned counsel for the petitioner and learned counsel for the State. None has appeared on behalf of opposite party No.2 despite notice is made sufficient.
2. Instant petition under Section 482 Cr.P.C. is filed by the petitioner for quashing of the FIR and the entire criminal proceeding in connection with Bargarh Town P.S. Case No.391 dated 12th August, 2018 corresponding to C.T. (SPL.) Case No.25 of 2018 pending in the file of learned District and Sessions Judge, Bargarh on the grounds stated therein.
3. Copy of the FIR is at Annexure-1 for the Court's perusal. In fact, the informant, namely, opposite party No.1 lodged the FIR, consequent upon which, Bargarh Town P.S. Case No.391 of 2018 was registered under Section 376(2)(n) IPC and other allied offences including the offence under Sections 3(1)(r) and 3(2)(v) of the SC & ST (PA) Act.

4. Learned counsel for the petitioner submits that there is no case of rape made out from the contents of the FIR and other materials and that apart, opposite party No.2 has denied any such relationship with the petitioner in her defence before the Family Court in MAT Case No.28 of 2019 and considering the same, the criminal proceeding which is pending before the learned court below should be quashed in the interest of justice.

5. Mr. Rout, learned counsel for the State on the other hand submits that prima facie case is well made out from the FIR and also statement of opposite party No.2 recorded under Section 161 Cr.P.C., a copy of which is at Annexure-2 and therefore, the proceeding pending before the Special Court cannot be quashed as has been prayed for by the petitioner.

6. Learned counsel for the petitioner refers to copy of the objection filed in MAT Case No.28 of 2019 to suggest that she denied of having been in such relationship with the petitioner. However, the Court finds that the claim of having relationship with the petitioner has been simply denied. For such a defence in the matrimonial case, the criminal proceeding at the behest of the opposite party No.2 cannot wipe out the allegations contained in the FIR which is to the effect that the petitioner did the alleged mischief on the false pretext of curing her for some kind ailment.

7. Learned counsel for the petitioner submits that since the investigation is still on and despite preliminary chargesheet filed, there has been no arrest cause during last four years, the petitioner should at least be allowed to go on bail on surrender subject to any conditions which is objected to by Mr. Rout, learned AGA.

8. Considering the nature of allegations, the Court is of the view that there is no case made out for quashing of the FIR and

criminal proceeding pending before the learned Sessions Court in C.T. (SPL.) Case No.25 of 2018 but the petitioner should be allowed to surrender before the learned court below and apply for regular bail, inasmuch as, it is not inclined to direct his release considering the nature and gravity of the allegations in the FIR.

9. Accordingly, it is ordered.

10. In the result, CRLMC stands disposed of with a liberty granted to the petitioner to surrender before the learned District and Sessions Judge, Bargarh in C.T. (SPL.) Case No.25 of 2018 on or before 16th November, 2022 and apply for regular bail which on being so moved shall be considered by the court on merits as per and in accordance with law.

11. An urgent certified copy of this order be granted as per rules.

(R.K. Pattanaik)
Judge

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