

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 1975 of 2022

Shuvam Sugyan Samantaray @ Toni Petitioner
Mr.S.K.Bhanjadeo, Advocate
Mrs. S.Balabantray, Advocate

-Versus-

State of Odisha & Another Opposite Parties
Mr. S.S.Mohapatra, ASC

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
28.11.2022

Order No.

- 03.
1. Heard Mr. Bhanjadeo, learned counsel for the petitioner and Mr. Mohapatra, learned counsel for the State-opposite party No.1.
 2. By this Court's order dated 19th September, 2022 notice was issued to opposite party No.2, namely, the informant and in I.A. No. 1552 of 2022, an interim order was passed to the effect that there shall no coercive action taken against the petitioner in connection with G.R. Case No. 513 of 2020 pending in the file of learned SDJM, Nayagarh.
 3. However, notice issued to opposite party No.2 returned unserved with an endorsement 'Addressee absent, intimation served by father & unclaimed, hence returned to sender'.
 4. Learned counsel for the petitioner submits that the opposite party No.2 is intentionally avoiding to receive the summons and that apart, the allegations as made to appear from the F.I.R., a copy of which is at Annexure-1, cannot stand especially with regard to an offence under Section 376 IPC since because the petitioner is the husband of opposite

party No.2 and while claiming so, he refers to a copy of the Marriage Certificate as at Annexure-3. It is claimed that the parties solemnized their marriage on 7th August, 2020 which is revealed from Annexure-3. It is further claimed by the learned counsel for the petitioner that the petitioner has approached the Family court, Nayagarh for restitution conjugal rights in terms of Section 9 of the Hindu Marriage Act which is pending disposal. In view of the above circumstances and as there was marriage in the month of August, 2020, opposite party No.2 could not have lodged the F.I.R. alleging rape against the petitioner. A copy of the statement of opposite party No.2 recorded under Section 164 Cr.P.C. is also placed reliance on to satisfy the Court that she was not accepted by the petitioner's father and that was her sole grievance. It is informed to the Court that in the meantime, the victim's father has expired. It is pleaded that under the above circumstances, instead of awaiting appearance of opposite party No.2 and in case the Court is not inclined to quash the order of cognizance dated 15th December, 2021, the petitioner should at least be directed to surrender and released on bail so that he would face the enquiry and trial and defend himself accordingly which is objected to by Mr. Mohapatra, learned counsel for the State by claiming that the appearance of opposite party No.2 should be awaited.

5. Since the Court is not inclined to interfere with the impugned order under Annexure-6, it is of the view that no purpose would be served to wait for the appearance of opposite party No. 2 and that too as against the materials gone through by the Court claiming marriage between the parties supported by Annexure-3 and other documents including a receipt of a temple as at Annexure-2 series besides an affidavit sworn by opposite party No.2 acknowledging the fact of marriage. In other

words, instead of keeping the proceeding alive in the Court, the petitioner should be directed to surrender and released on bail subject to conditions.

6. Accordingly, it is ordered.

7. In the result, CRLMC stands disposed of with a direction to the petitioner to surrender before the learned court of SDJM, Nayagarh on or before 16th December, 2022 in connection with G.R. Case No. 513 of 2020 arising out of Nayagarh P.S. Case No. 159 of 2020 and in the event he surrenders, the court below shall release him on bail subject to conditions as would be found just and proper in the facts and circumstances of the case.

8. Urgent certified copy of this order be issued as per rules.

