

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2222 of 2022

Sankari @ Sanbitarani Ray

.... Petitioner
Mr. S. Mohanty, Advocate

-Versus-

State of Odisha

.... Opposite Party
Mr. T.K. Praharaj, SC

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
28.09.2022

Order
No.

02.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State.

2. In the present case, the challenges is as to the prayer to quash the proceeding which is pending before the court of learned Assistant Sessions Judge, Jaleswar in S.T. Case No.2(A) of 2010 arising out of Jaleswar P.S. Case No.122 of 1995 further corresponding to G.R. Case No.283 of 1995 on the ground that the principal accused has been acquitted in the charge of rape by judgment in S.T. No.2(A) of 2010, a copy of which is at Anenxue-2.

3. Learned counsel for the petitioner submits that FIR was lodged in the year 1995. According to learned counsel for the petitioner, though the incident took place on 10th October, 1995 but the FIR was lodged by the informant on 1st November, 1995 and there has been inordinate delay and that apart, learned counsel for the petitioner submits that since the principal accused has been acquitted in S.T. Case No.2(A) of 2010 for offence under Section 376 IPC by judgment dated 21st March, 2013 passed by the learned

Assistant Sessions Judge, Jaleswar in view of such hostile evidence received from the victim, no purpose would be served to direct the petitioner to face the trial in the split up case. In other words, it is submitted that the petitioner should not be directed to face a full-fledged trial when there is no evidence at all from the side of the victim rather the principal accused has been acquitted on the strength of hostile evidence received from her. Mr. Praharaj, learned counsel for the State admits the fact that the informant was in fact examined but she turned hostile and therefore, the prosecution had to examine her in terms of Section 154 of the Indian Evidence Act and on that basis in absence of any evidence in support of the alleged incident, the principal accused was acquitted for the offence punishable under Section 376 IPC.

4. A copy of the judgment as at Annexure-2 in respect of the principal accused is perused. In the FIR, it is indeed alleged that the principal accused committed sexual mischief vis-à-vis the victim.

5. The FR indicates that on the alleged date of occurrence, the victim was subjected to sexual mischief by the principal accused. In so far as the allegation against the petitioner is concerned, as submitted to the Court by Mr. Praharaj, learned counsel for the State that he carried the victim to the spot where the incident happened. As it is made to understand, the principal accused did the mischief after the victim was left near him. The involvement of the petitioner is only to the extent that he took the victim on the pretext of giving her puffed rice and in any case, the principal accused faced the trial, wherein, the informant, namely, father of the victim did not support the prosecution case, rather, turned hostile, consequent upon which, the learned Sessions Court acquitted him of the charge of rape. It is informed to the Court by Mr. Praharaj, learned counsel for the State that the victim was not at

all examined in the said case. In fact, on perusal of the judgment in S.T. No.2(A) of 2010, the Court finds that the victim as a witness was not examined from the side of the prosecution. In any case, the informant did not support the prosecution case, as a result of which, though he was examined in Section 154 of the Indian Evidence Act, the learned Sessions Court did not find any material vis-à-vis the principal accused. Considering such evidence, the Court is of the opinion that the petitioner, who happened to be an abettor and not the principal accused or having not being shown as a sexual offender vis-à-vis the victim, namely, the daughter of the informant, in absence of evidence as the informant himself turned hostile in S.T. Case No.2(A) of 2010, no purpose would be served to criminally prosecute the petitioner and to make him face a full-fledged trial. Having said that, the conclusion of the Court is that the criminal proceeding which is pending before the learned Assistant Sessions Judge, Jaleswar in S.T. Case No.2(A) of 2010 should be quashed with respect to the petitioner for the reasons discussed herein above.

6. Accordingly, it is ordered.

7. In the result, the CRLMC stands allowed. As the corollary, the criminal proceeding in S.T. Case No.2(A) of 2020 arising out of Jaleswar P.S. Case No.122 of 1995 further corresponding to G.R. Case No.283 of 1995 pending in the file of learned Assistant Sessions Judge, Jaleswar vis-à-vis the petitioner is hereby quashed.

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

(R.K. Pattanaik)
Judge