

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.393 of 2022

Prafulla Naik

....

Petitioner

Mr. B. Mohapatra, Advocate

-versus-

***State of Odisha and
another***

....

Opp. Parties

*Mr. Manoranjan Mishra,
Addl. Standing Counsel*

**CORAM:
JUSTICE S.K. SAHOO**

**ORDER
06.09.2022**

Order No.

01. This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Heard the learned counsel for the petitioner and the learned counsel for the State.

In this revision petition, the petitioner has challenged the order dated 11th July, 2022 passed by the learned Additional Sessions Judge -cum- Special Judge under POCSO Act, Berhampur in G.R. Case No.10 of 20202 wherein the petition under section 227 of Cr.P.C. filed to discharge him from the offence under section 6 of the POCSO Act, 2012 has been rejected.

It appears that the first information report was

lodged by the victim on 25th February, 2020 at Tarasingh Police Station which was registered as Tarasingh P.S. Case No.35 of 2020 under sections 376(2)(n), 294 and 506 of I.P.C. and on completion of investigation, charge sheet was filed on 3rd April, 2020 under sections 376(2)(n), 294 and 506 of the I.P.C. read with section 6 of the POCSO Act.

Learned counsel for the petitioner referring to the first information report contended that it has been specifically mentioned in the F.I.R. that the commission of rape was from 7th January, 2020 to 20th February, 2020. He further submits that during the course of investigation, the Investigating Officer seized the School Admission Register of the school where the victim was prosecuting her study, from which it appears that her date of birth is 7th December, 2001 and if the same is taken into account, then on 7th January, 2020 when the offence is alleged to have been committed for the first time, the victim was eighteen years and one month and, therefore, since she was not a child, the ingredients of the offence under section 6 of the POCSO Act would not be attracted and the learned trial Court has committed illegality in rejecting the discharge petition.

Learned counsel for the State, on the other hand, submits that in the statement under section 164 of Cr.P.C., the victim has stated her age to be nineteen years and she specifically stated that since last four

years the petitioner was keeping physical relationship with her. It is further contended that in view of such statement made before the learned Magistrate, it can be said that when the offence took place on the victim, she was a child. Therefore, the Investigating Officer has rightly submitted charge sheet, inter alia, for commission of offence under section 6 of the POCSO Act and the learned trial Court is quite justified in framing of charges including section 6 of the POCSO Act.

Adverting to the contentions raised by the learned counsel for the respective parties, there is no dispute that the date of commission of offence has been specifically mentioned in the F.I.R., whereas in the statement of the victim recorded under section 164 of Cr.P.C., she has stated that the petitioner was keeping physical relationship with her since last four years and if the date of birth as per the School Admission Register is taken into account and the statement of the victim recorded under section 164 of Cr.P.C. is considered, obviously the victim was a 'child' when offence was committed for the first time.

The question that crops up for consideration at this stage is whether it would be proper to assess the age of the victim taking into account the date of commission of offence as mentioned in the first information report which was lodged by her or the statement of the victim recorded under section 164 of

Cr.P.C. In my humble view, since charge can be framed even on strong suspicion, if cogent materials to that effect are available on record and F.I.R. is not be all and end all of the matter and it is not the encyclopedia of the entire prosecution case, since on the prayer of the I.O., the victim was examined and her statement was recorded under section 164 of Cr.P.C., if she has stated differently in her statement recorded under section 164 of Cr.P.C. relating to date of commission of offence than the F.I.R., which one would be acceptable, it would be decided by the learned trial Court at the appropriate stage after the victim examined, cross-examined and no finding at this stage should be given which is likely to cause serious prejudice to the either of the parties.

Therefore, on the basis of the available materials on record, I find no illegality and perversity in the impugned order.

Accordingly, the Criminal Revision being devoid of merit stands dismissed.

(S.K. Sahoo)
Judge