

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 1428 of 2021

Prasanta Kumar Mallick

....

Petitioner

Mr. Gokha Behera, Advocate

Versus

1. State of Odisha

2. Monalisha Mallick

.... ***Opposite Parties***

Mr. P.K. Mohanty, A.S.C.

(For Opp. Party No.1)

Mr. A.K. Biswal, Advocate

(For Opp. Party No.2)

**CORAM:
JUSTICE SAVITRI RATHO**

**ORDER
23.02.2022**

Order No.

05. 1. This matter is taken up through hybrid mode.
2. Heard Mr. Gokha Behera, learned counsel for the petitioner, Mr. P.K. Mohanty, learned Addl. Standing Counsel for the State and Mr. A.K. Biswal, learned counsel for the opp. party no.2-informant.
3. This is an application under section 482 of the Code of Criminal Procedure filed by the petitioner for quashing the entire proceeding by setting aside the order taking cognizance of offences punishable under Section 366(A), 376(2)(n), 363, 368 of the IPC and the charge in Special G.R. Case No.55 of 2017, pending in the

Court of learned Addl. Sessions Judge -cum- Special Judge, POCSO Act, Cuttack. But these orders have not been annexed.

4. The prosecution allegations in brief are when the opp. party no.2-informant was studying in Athagarh Womens College and was a minor, on 05.01.2016 the petitioner took her away in car to Gopalpur, kept her confined there and assaulted her and subjected her to forcible sexual intercourse .Thereafter when her parents learnt about the matter there was discussion for marriage and their marriage was solemnised at Jagulei Temple in presence of family members. But the petitioner ill treated and assaulted her during their stay in Tigiria and Banikantha Nagar. At Tigiria he subjected her to different types of sexual harassment.

5. Mr. Gokha Behera, learned counsel for the petitioner submits that the order of cognizance and the order of framing charges are liable to be set aside for the following reasons:-

(i) Even though it has been stated that the opp. party-victim girl had been kidnapped on 05.01.2016 and rescued on 14.09.2016 but she has appeared in the +2 examination within that said period which shows that she was not confined by the petitioner.

(ii) As per the information received under the RTI Act, the date of birth of the victims 23.12.1997 and so she was aged more than

18 years on the date of alleged occurrence for which offence under Section 6 of the POCSO Act is not made out against her.

(iii) The FIR has been lodged on 29.12.2016 which is 9 months after the victim girl went missing and

(iv) The medical report of the informant does not reveal any sign of recent sexual intercourse.

6. Mr. P.K. Mohanty, learned Addl. Standing Counsel submits that this is not fit case for exercising power under Section – 482 Crl.P.C to quash the proceedings. He further submits that the report of the P.I.O. which is relied upon by the learned counsel for the petitioner, does not reveal that the date of birth of the petitioner is 23.12.1997. He further submits that in the school leaving certificate, the date of birth of the victim girl has been mentioned to be 23.03.1999 from which it is apparent that the victim was aged less than 18 years on the date of occurrence. He further submits that the contentions of the learned counsel for the petitioner can be considered at the stage of trial and a mini trial cannot be held while hearing an application under Section 482 Cr.P.C.

7. Mr. A.K. Biswal, learned counsel for the opp. party no.2 disputes the submissions of the learned counsel for the petitioner but supports the submissions of the learned State Counsel He has further submitted that has it has not been stated in the FIR that the

victim girl had been detained by the petitioner till 14.09.2016. He further submits that the name of the father of the petitioner indicated in the FIR does not match with the name indicated in the documents obtained under the RTI Act by the petitioner. His final submission is that the contentions of the learned counsel for the petitioner relate to factual aspects which cannot be adjudicated in an application under Section – 482 CrI.P.C and the application being misconceived, is liable to be dismissed.

8. Considering the submissions of learned counsel for the respective parties, the nature of allegations made against the petitioner and stage of the case, I do not think this to be fit case for exercise of power under Section – 482 CrI.P.C and consequently dismiss it. It is open to the petitioner to raise all his contentions during which shall be considered in accordance with law.

9. With the aforesaid observation, the CRLMC is dismissed.

10. Urgent certified copy of this order be granted on proper application.

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(Savitri Ratho)
Judge