

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3574 of 2016

Santosh Kumar Kanhar.

....

Petitioner

-versus-

State of Odisha & others.

....

Opposite Parties

CORAM: JUSTICE S.PUJAHARI

ORDER

08.07.2022

Order No.

05.

1. This matter is taken up through Hybrid mode.
2. The petitioner in this application under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") has prayed for quashing of the order dated 11.07.2016 passed by the learned Special Judge, Nayagarh in T.R. No.22 of 2016 taking cognizance of the offences under Sections 363, 376, 506 of IPC and Section 6 of the POCSO Act.
3. Heard the learned counsel for the parties.
4. It is submitted by the learned counsel for the petitioner that in the statement recorded under Section 164 of Cr.P.C. the victim being narrated that she was grown-up at the time of occurrence and being in love with the present petitioner she had

sex with him and, as such, she went with him and their marriage was solemnized and she was pregnant, the Court ought not have taken cognizance and proceeded against the petitioner, more so when this Court taking into consideration the same had granted anticipatory bail to the present petitioner. In such premises, he submits to quash the impugned order of cognizance as well as the criminal prosecution.

5. Learned counsel for the State, however, submits that the offence committed being heinous and serious in nature and the Court having looking into the materials on record had taken cognizance under the POCSO Act and other offences under the IPC, even if the victim in her 164 Cr.P.C. statement stated the aforesaid, it is a prima-facie case under Section 376 of IPC and Section 6 of the POCSO Act being made out and, as such, the aforesaid cannot be a ground to quash the prosecution.

6. However, the learned counsel for the Informant though has not filed any affidavit in this regard, neither he has supported nor controverted the submission made.

7. The case is pending since 2016. The Court considering the materials available on record had taken cognizance of the offences. From there, it appears that the victim was a minor. Therefore, the contention advanced to quash the impugned order of cognizance as well as the criminal prosecution on the ground stated is devoid of merit.

8. Hence, this CRLMC filed challenging the impugned order being devoid of merit stands dismissed. Interim order dated 25.11.2016 passed by this Court stands vacated.

9. However, liberty is given to the petitioner to raise all such contentions at the time of framing of charge and in that event, the Court shall considering the materials available on record decide the same in the manner known to law without being influenced by this order in any manner.

10. A copy of this order be communicated to the Court below forthwith.

(S. Pujahari)
Judge

MRS

