

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 1696 of 2021

Mahanta Behera

....

Petitioner

Mr. A.K. Mishra, Advocate

-versus-

State of Odisha and another

....

Opposite Parties

Mr. D. Mund, AGA

CORAM: JUSTICE V. NARASINGH

ORDER

18.04.2022

Order No.

08.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the informant respectively.
3. Assailing the order of cognizance dated 08.02.2021 passed by the learned Special Judge, Puri in Special G.R. Case No.102 of 2020 arising out of Konark P.S. Case No.12 of 2019 under Sections 363/366(A)/376(2) (n) IPC read with Section 6 POCSO Act.
4. It is submitted by the learned counsel for the petitioner-accused that during the pendency of the proceeding with the intervention of the well-wishers the matter has been amicably settled and in fact the opposite party No.2 has joined the petitioner in matrimony and they are blessed with a girl child.

5. Such submission is fortified by the learned counsel appearing for the Opposite Party No.2, the victim girl who has filed an affidavit in Paragraph 3 and 4 thereof, which are germane for just adjudication of the present lis is quoted hereinunder:

X X X X X X X X

“3. That, in then meantime, I have been blessed with a girl child from my wedlock with the accused petitioner and residing with my husband (petitioner) till date.

4. That, I do not want to proceed with the above case any further or any manner what so ever as I am residing with the accused petitioner now my husband after my marriage.”

6. It is submitted by the learned counsel for the petitioner that in view of the of the affidavit filed by the clearly indicating that she does not want to proceed with the case at hand directing the petitioner to go through the kind of trial to be exercised in futility.

7. Learned counsel for the State referring to the judgment of the Apex Court in the Case of ***Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others v. State of Gujarat and another*** reported in ***AIR 2017 SC 4843***, submitted that the Apex Court has cautioned regarding exercise of power under Section 482 Cr.P.C. in as much as, it has been stated that such power is not to be exercised in those prosecution which involved heinous and serious offences.

8. Learned counsel for the petitioner relied on the order of the ***Madurai bench of Madras High Court*** decided on 28.02.2020

(Prasantha) v. the State. Facts of which are more or less akin to the case at hand and relying on the said judgment, it is submitted by the learned counsel for the petitioner that in view of the affidavit filed by the informant that she is married and blessed with a child, subjecting the petitioner to face trial would result in causing hardship.

9. On perusal of the materials on record, it is seen that in the affidavit, veracity of which is not in question, it has been clearly set out by the victim Opposite Party No.2, as well as the informant-father, that the petitioner-accused and victim are leading a happy married life.

10. Hence this Court relying on the judgment of the Apex Court reported in **AIR 2017 SC 4843** more particularly Paragraph 4 thereof, which is quoted hereunder;

X X X X X X

“(4). While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.”

directs the proceeding pending on the file of learned Special Judge, Puri in Special G.R. Case No.102 of 2020 arising out of Konark P.S. Case No.12 of 2019, under Sections 363/366(A)/376(2) (n) IPC read with Section 6 POCSO Act, to be quashed in respect of the present petitioners in exercise of power under Section 482

Cr.P.C. in the interest of justice and keeping in view the welfare of the victim and the child.

10. Accordingly, the CRLMC stand disposed of.
11. Urgent certified copy of this order be granted as per rules.

Santoshi

