

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2798 of 2022

Rajendra Panigrahi

....

Petitioner

Mr. Bisworanjan Swain, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. T.K.Praharaj, SC

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
01.12.2022

Order No.

- 01.
1. Heard learned counsel for the petitioner and Mr. Praharaj, learned counsel for the State-opposite party.
 2. In the present case, the challenge is to the order of cognizance dated 16th January, 2021 in G.R. Case No. 470 of 2020 corresponding to Dhamnagar P.S. Case No. 265 of 2020 pending in the file of learned JMFC, Dhamnagar on the grounds stated there in.
 3. Learned counsel for the petitioner submits that no offence under Section 376 IPC is made out for the reason that the parties were in a relationship on the consent of the victim, who is a major. Under the circumstances when the parties had been in a consensual relationship, as further submitted by the learned counsel for the petitioner, an offence of rape under Section 376 IPC cannot be attracted and hence, the impugned order dated 16th January, 2021 is bad in law.

4. Mr. Praharaj, learned counsel for the State on the other hand refers to the F.I.R., a copy of which is at Annexure-1, to show the conduct of the petitioner so also the manner in which the victim was treated. It is claimed by Mr. Praharaj, learned counsel for the State that victim received injuries while engaging herself with the petitioner.

5. The Court perused the F.I.R. in which the victim mentioned in detail with regard to the promise she had received from the petitioner and thereafter, the manner of treatment she was meted out in the hands of the petitioner. Considering the contents of the F.I.R., the Court is of the view that whether there was a promise genuine or false from inception is to be examined by the learned court below. It has to be determined by learned court below during trial as to what was the conduct of the petitioner and whether, such a promise was given to the victim genuinely or only for the purpose of obtaining her consent for cohabitation. If it is a false promise even though the victim is a major, there was no consent in the eye of law and in such cases, an offence under Section 376 IPC may be attracted. Without expressing anything on merits, the Court is of the view that such an aspect is to be examined by the learned court below during enquiry. In other words, the Court is not inclined to interfere with the criminal proceeding at this stage as has been prayed for.

6. Accordingly, it is ordered.

7. In the result, CRLMC stands disposed of with liberty granted in favour of the petitioner to raise all such grounds as available to him under law at the time of framing of charge and in the event, any such application so moved by him before the court of learned court below in G.R. Case No. 470 of 2020 for discharge, the court shall

examine the grounds and pass appropriate order thereon as per and in accordance with law.

8. Urgent certified copy of this order be issued as per rules.

(R.K. Pattanaik)
Judge

