

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2921 of 2022

Maheswar Mallik

.... Petitioner
Mr. P.R. Singh, Advocate

-Versus-

State of Orissa

.... Opposite Party
Mr. S. Mishra, ASC

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
13.12.2022

Order
No.
01.

1. Heard learned counsel for the petitioner and learned counsel for the opposite party State.
2. The challenge in the present case is with regard to the learned Judge Special Court POCSO, Dhenkanal for having taken cognizance of the offences under Section 8 and 12 of the POCSO Act in connection with C.T. (Spl.) Case No.57 of 2020 corresponding to Nihal Prasad P.S. Case No.96 of 2020 on the grounds stated therein.
3. A copy of the impugned order is at Annexure-1 whereby the learned Judge Special Court POCSO, Dhenkanal has taken cognizance of offences under Section 354-A IPC and other allied offences besides Sections 8 and 12 of the POCSO Act along with Section 66(C) of the IT Act.

4. A copy of the FIR as at Annexure-2 shows that Nihal Prasad P.S. Case No.96 was registered for the alleged offence against the petitioner and his involvement vis-à-vis the victim who was subjected to sexual mischief by him. Learned counsel for the petitioner submits that even though the other offences are prima facie made out but no case under Sections 8 and 12 of the POCSO Act are proved and established even by bare reading of the FIR and also statement of the victim recorded under Section 164 Cr.P.C. and hence, the impugned order under Annexure-1 is bad in law which is objected to by the learned counsel for the State and according to Mr. Mishra, learned ASC, the mischief is alleged against the petitioner and as to the nature of overt act committed by him to be examined by the learned Special court during enquiry and trial and hence, it is not a case for interference.

5. The victim's statement recorded under Section 164 Cr.P.C is at Annexure-3 and the same is perused. The detail of the circumstances leading to the lodging of the FIR stands described in Annexure-2. It is made to understand that the petitioner being in a dominant position took advantage of the situation and manipulated the victim and did the mischief. The manner in which the overt act was committed by the petitioner has been narrated by the victim in Annexure-1. Whether there was any sexual mischief committed or not though not clearly disenable from Annexure-1, however, it made to understand that the petitioner did overt act and subjected the victim to some kind of mischief. Considering the allegation in Annexure-1 and circumstances under which the alleged mischief said to have been committed by the petitioner, this Court is not inclined to interfere with regard to the learned court below have taken

cognizance of offences under Section 8 and 12 of the POCSO Act which is to be examined in course of enquiry and trial.

6. At this juncture, learned counsel for the petitioner submits that if the Court is not inclined to interfere at this stage, the petitioner may be liberty granted to raise all such grounds at the time of framing of charge. Considering the above submission, the Court is of the view that such a liberty should be allowed for petitioner to raise the grounds while seeking discharge for the alleged offences under the POCSO Act before the learned Special court.

7. Accordingly, it is ordered.

8. In the result, the CRLMC stands disposed of with a liberty in favour of the petitioner to raise the ground as to if any offence under Sections 8 and 12 of the IPC are made out or not at the stage of framing of charge and in the event any such application so moved seeking discharge, the learned Judge Special Court POCSO, Dhenkanal shall pass appropriate order in respect thereof in connection with C.T. (Spl.) Case No.57 of 2020.

9. Urgent certified copy of this order be granted as per rules.

(R.K. Pattanaik)
Judge