

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMC No. 3238 of 2022

Fula Behera

.... **Petitioner**
Miss Agnisikha Ray, Advocate

-Versus-

State of Odisha

.... **Opposite Party**
Mr. Sitikanta Mishra, ASC

CORAM:
JUSTICE R.K.PATTANAIK

Order No.

ORDER
07.12.2022

01. 1. Heard Miss Ray, learned counsel for the petitioner and Mr. Mishra, learned counsel for the State-opposite party.
2. Instant petition under Section 482 of Cr.P.C. is filed at the behest of the petitioner for quashing of the criminal proceeding in Special G.R. Case No. 25(A) of 2022 arising out of Naktideul P.S. Case No. 83 of 2022 pending in the file of learned Additional Sessions Judge-cum-Special court (POCSO), Sambalpur on the ground that the other accused has been acquitted of all the charges after a full-fledged trial in Special G.R. Case No. 25(A) of 2022 vide a judgment of the learned Additional Sessions Judge-cum-Special court (POCSO), Sambalpur dated 27th September, 2022.
3. A copy of the F.I.R. is at Annexure-1 and the same is perused by the Court which shows that the informant lodged the F.I.R. later to which Naktideul P.S. Case No. 83 of 2022 was registered under Section 363 IPC and thereafter, chargesheet under Section 376(2)(n) IPC and other allied offences besides Section 6 of the POCSO Act and Section 9 of the Protection of Child Marriage Act was filed.

4. Learned counsel for the petitioner submits that since the principal accused is acquitted of the charges levelled against him after he was made to face a trial in Special G.R. Case No. 25(A) of 2022, no fruitful purpose would be served to subject the petitioner to a full blown trial especially considering the fact that the evidence of the material witnesses was hostile. While claiming so, the learned counsel for the petitioner refers to a copy of the judgment in Special G.R. Case No. 25(A) of 2022 under Annexure-2.

5. Mr. Mishra, learned counsel for the State fairly concedes that the material witnesses including the victim examined as P.W.6 turned hostile which is revealed from Annexure-2.

6. The judgment as at Annexure-2 is perused by the Court. The principal accused is the husband of the petitioner and he faced the trial under the alleged charges under Section 376(2)(n) IPC and other offences under the Special Acts and was exonerated finally. In the body of the judgment, the learned Sessions court concluded that the victim, namely, P.W. 6 including her parents, namely, P.W.s 1 & 2 who are material witnesses to the case have not whispered a single word against the said accused and towards the end also concluded the victim at whose instance the F.I.R. was lodged did not stick to her own statement. Under the above circumstances, when the material witnesses did not support the prosecution case, inasmuch as, P.W.6, namely, the victim turned hostile so also her parents, it is hence submitted that subjecting the petitioner to a full-fledged trial would be a worthless exercise. The learned counsel for the petitioner cites the following judgments of this Court in **Ram Chandra Das Vrs. State of Orissa 2014(II) OLR -510** and **Sri Premananda Sahu Vrs. State of Orissa 2012(II) OLR-961** in support of her contention.

7. Having regard to the acquittal of the other accused of all the charges, who faced trial offences under Sections 376(2)(n) IPC besides Section 376(3) read with Section 6 of the POCSO Act and Section 9 of the POCSM Act, the Court is of the conclusion that no fruitful purpose would be served to direct the petitioner to face a trial as there is a remote possibility of having evidence against her unlike the material before the Sessions court vis-à-vis the principal accused in Special G.R. Case No. 25(A) of 2022. That apart, since the material witness including the victim, namely, P.W. 6 and her parents turned hostile, there is also a bleak chance of conviction.

8. Under the above circumstances, considering the nature of evidence received during trial in Special G.R. Case No. 25(A) of 2022, it is reiterated that the criminal proceeding pending against the petitioner pending before the Special court should be quashed in exercise of inherent jurisdiction as it would be a futile exercise. The above view of the Court is also subscribed in the decisions of **Ram Chandra Das** and **Sri Premananda Sahu** (supra). In other words, it is a fit case where jurisdiction Section 482 Cr.P.C. should be exercised to terminate the proceeding and accordingly, it is ordered.

9. Consequently, CRLMC stands allowed.

10. As a necessary corollary, the criminal proceeding in G.R. Case No.25(A) of 2022 arising out of Naktideul P.S. Case No. 83 of 2022 pending in the file of learned Additional Sessions Judge-cum-Special court (POCSO), Sambalpur is hereby quashed.

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

(R.K.Pattanaik)
Judge