

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2074 of 2021

M. Jitu @ M. Amulya Pradhan

Petitioner

Mr. P.K. Parhi, Advocate

-Versus-

State of Odisha and Others

.... Opposite Parties

Mr. T.K. Praharaj, SC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

17.11.2022

Order
No.
02.

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. In the instant case, challenge is as to the criminal proceeding in connection with G.R. Case No.105 of 2019 corresponding to Rambha P.S. Case No.173 of 2019 pending in the file of learned Special Judge-cum-2nd Additional Sessions Judge, Berhampur on the grounds stated therein.
3. Copy of the FIR is at Annexure-1.
4. After FIR was lodged, Rambha P.S. Case No.173 of 2019 was registered under Section 376(1) IPC and other allied offences besides Section 6 of the POCSO Act.
5. Mr. Parhi, learned counsel for the petitioner submits that the victim was not a minor as on the date of alleged occurrence which is as per the information shared by the concerned school in respect of which the Headmaster of the said school submitted a certificate, a copy of which is at Annexure-3 and in support of such contention, an additional affidavit is filed by the petitioner in Court

today. It is submitted that the date of birth of the victim is 15th March, 2001 and therefore, no offence under Section 6 of the POCSO Act can be attracted. While contending so and having regard to the nature of allegation to suggest that the parties were in consensual relationship, Mr. Parhi, learned counsel for the petitioner refers to a decision of the Apex Court in **Mandar Deepak Pawar Vrs. The State of Maharashtra and Another** reported in **2022 (II) OLR (SC) 680**.

6. Mr. Praharaj, learned counsel for the State on the other hand submits that the petitioner committed the alleged mischief at a time when victim was a minor which is prima facie evident from the materials on record and that apart, the marriage between the parties did not materialize which was on account of the conduct of the petitioner whose alleged overt act stands described in the FIR and under the above circumstances, since the case is made under Section 6 of the POCSO Act and other IPC offences, the criminal proceeding pending before the learned Special court cannot be quashed in exercise of inherent jurisdiction.

7. The Court perused the FIR and the allegation contained therein and the circumstances leading to the lodging of the report at the instance of the victim.

8. As it appears, the petitioner and the victim did develop relationship and thereafter the former declined to marry the latter and when the marriage could not materialize, the report was lodged. The details of the mischief committed by the petitioner and his family are also described in the FIR.

9. At this stage, the Court cannot accept any such certificate issued by the school with regard to the date of birth of the victim which can only be taken cognizance of by the IO since the

investigation is still underway. The petitioner is at liberty to bring all such materials to the notice of the IO with regard to the age of the victim which is claimed to be 15th March, 2001. The Court is also to await the final opinion of the IO. Considering such an affidavit, no opinion can be formed by this Court vis-à-vis the age of the victim which should be left to the discretion and examination of the IO.

10. Considering the allegations in the FIR and statement of victim recorded under Section 164 Cr.P.C. a copy of which is at Annexure-2, the Court finds that the parties have had a relationship by the time when the victim was 16-17 years and thereafter, the petitioner declined to marry which led to the lodging of the FIR. Considering the allegations made as there was promise of marriage and it was breached and thereafter, the petitioner declined to marry of the victim, the Court is of the view that the alleged mischief is prima facie revealed from the FIR. That apart, consent of the victim at the relevant point of time since was a minor is of the no consequence. However, having regard to the fact that the investigation is still underway with regard to the incident of the year 2020, the Court although is of the view that there is no material to consider quashing of the criminal proceeding but then, the petitioner should be directed to surrender and apply for bail in connection with G.R. Case No.105 of 2019 pending in the file of learned Special Judge-cum-2nd Additional Sessions Judge, Berhampur.

11. Accordingly, it is ordered.

12. In the results, CRLMC stands disposed of with a direction to the petitioner to surrender before the learned Special Judge-cum-2nd Additional Sessions Judge, Berhampur on or before 2nd December, 2022 in connection with G.R. Case No.105 of 2019 corresponding to Rambha P.S. Case No.173 of 2019 and in the event, he surrenders

within the stipulated time and apply for bail, the court shall consider his bail on merit but keeping in view the mitigating factors, such as, the existing relationship of the parties, etc. prior to lodging of the FIR.

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

(R.K. Pattanaik)
Judge

TUDU

