

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2173 of 2021

Aniruddha Panda

....

Petitioner

Mr. J. Pal, Advocate

-Versus-

State of Odisha and Another

....

Opposite Partise

Mr. T.K. Praharaj, SC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

09.12.2022

Order  
No.  
06.

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. Instant petition under Section 482 Cr.P.C. is at the behest of the petitioner assailing the impugned order dated 7<sup>th</sup> October, 2021 under Annexure-10 whereby applications under Annexures-6 & 7 dated 2<sup>nd</sup> August, 2021 and 6<sup>th</sup> September, 2021 respectively have been rejected.
3. A copy of the FIR is at Annexure-1 and the same is perused by the Court.
4. In fact, on a report being lodged by the informant, Bhubaneswar Mahila P.S. Case No.44 was registered under Sections 376-DA, 376(2)(n) and 506 IPC besides Section 6 of the POCSO Act.
5. In the meantime, chargesheet is submitted.

6. Learned counsel for the petitioner submits that in so far as the electronic evidence is concerned, since it is a part of the chargesheet and likely to be relied upon by the prosecution, it should have been supplied along with the police papers in compliance of Section 207 Cr.P.C. Mr. Pal, learned counsel for the petitioner submits that applications under Annexures-6 & 7 filed before the learned court below is in respect of electronic evidence and to supply it to petitioner but then the same was not allowed vide impugned order under Annexure-10. It is submitted that such evidence is required to be supplied to the petitioner being a part of the police papers in consonance with Section 207 Cr.P.C. While contending so, Mr. Pal, learned counsel for the petitioner relies on a copy of the additional chargesheet and submits that the allegation with regard to video recording, the petitioner was exonerated, as it was found to be false since nothing could be elicited from the mobile handset which was seized during investigation and was subjected to cyber forensic test.

7. Mr. Praharaj, learned counsel for the State on the other hand submits that inspection of the electronic evidence was allowed but then since it is a sensitive matter involving the victim aged about 16 years, the learned court below did not commit any wrong or error in denying supply cloned electronic evidence as well applied for under Annexure-6 & 7 and therefore, the impugned order under Annexure-10 needs no interference.

8. Mr. Pal, learned counsel for the petitioner cited a decision of the Apex Court in the case of **P. Gopalkrishnan Vrs. State of Kerala (2020) 9 SCC 161** and contends that contents of memory

card/pen-drive being electronic record is held to be and regarded as document and if the prosecution is relying on electronic evidence, the accused must be given a cloned copy thereof to enable him to present an effective defence during the trial, however, in cases involving issues such as privacy of the complainant or witness of his/her identity, the Court may be justified in providing inspection of the same. It is contended that since as per the additional chargesheet, there is no such incriminating material is available in so far as the electronic record concerned, since the allegation found to be false and in that no objectionable content was found and was even put to cyber forensic test, the learned court below should have allowed Annexure-6 & 7. Mr. Praharaj, learned counsel for the State submits that notwithstanding such an additional chargesheet with finding that the allegation as to the video recording in mobile phone one of the co-accused was found to be false whether such electronic record is to be provided or not should be with consent and in presence of the victim with an opportunity to her of being heard.

9. Considering the above submissions of learned counsel for the respective parties, the Court is of the view that the petitioner, in the facts and circumstances and since a copy of the additional chargesheet is brought onto record should be provided an opportunity to submit a fresh application for supply of cloned electronic evidence which is to be examined by the court concerned and decided and disposed of with the participation of the victim.

10. Accordingly, it is ordered.

11. In the result, CRLMC stands disposed of with a liberty granted to the petitioner to freshly apply before the court of

learned Additional Adhoc Sessions Judge, Fast Track Special Court (POCSO), Bhubaneswar in connection with T.R. Case No.352 of 2020 for supply of cloned copy of the electronic record and in the event, any such application so moved by him, the court below shall consider the same and pass appropriate order as per and in accordance with law with the participation and immediate presence of the victim. As a necessary corollary, the impugned order under Aennxure-10 passed by the learned court below is hereby set aside.

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



(R.K. Pattanaik)  
Judge

TUDU