

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 524 of 2022

An application under Section 401 read with Section 397 of the Code of Criminal Procedure, 1973 against the order dated 19.09.2022 passed by learned Addl. Sessions Judge, Angul in C.T. (Special) Case No. 58 of 2021

AFR Ghanashyama Mandothia Petitioner

-Versus-

State of Odisha and another Opp. Parties

Advocate(s) appeared in this case:-

For Petitioner : Mr. Bharat Bhusan Routray,
Advocate.

For Opp. Party : Mr. P. Tripathy,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

23rd December, 2022

SASHIKANTA MISHRA, J.

The petitioner seeks to challenge the order dated 19.09.2022 passed by learned Additional Sessions

Judge, Angul in C.T. (Special) Case No. 58 of 2021, whereby his application for discharge was rejected.

2. The facts of the case are that an FIR was lodged by the victim- opposite party No.2 alleging that the petitioner professed his love for her repeatedly and ultimately kept physical relationship with her on the assurance of marrying her. The victim became pregnant but it was terminated because of certain medicines taken by her. Eventually, they got married at Budhi Thakurani Temple on 31.05.2021 and such marriage was said to have been registered before a Notary Public. It is the grievance of the victim that despite assurance, the petitioner did not take the victim to his house and on the contrary abused her by referring to her caste and also threatened to make her nude photographs viral.

3. A petition for discharge was filed on the ground that dispute between the petitioner and the victim has been settled and that both have agreed to reside as husband and wife. Learned court below after considering the FIR allegations and the statement of the victim held

that the so called consent given by the victim to the physical relationship has to be treated as one given under misconception of fact and therefore, covered under Section 90 of IPC. Learned court below further took note of the presumption under Section 114A of the Indian Evidence Act. Thus, disbelieving the petitioner's contention that he had married the victim, the petition for discharge was rejected by the court below by the impugned order.

4. Heard Mr. B.B. Routray, learned counsel for the petitioner and Mr. P. Tripathy, learned Addl. Standing Counsel for the State and also heard the victim, who appeared in person being accompanied by her mother pursuant to notice issued.

5. It is submitted by Mr. Routray that when the FIR itself reveals that the victim was married at Budhi Thakurani Temple, the question of rape does not arise. The victim lodged the FIR only to put pressure on the petitioner, since there was objection to their relationship from his family. Mr. Routray further submits that in so far

as the offence under Section 3 of SC & ST (POA) Act is concerned, the allegations are completely general and omnibus in nature.

6. The victim, being asked about the case stated that notary affidavits showing her marriage with the petitioner on 31.05.2021 were prepared by her advocate without her knowledge and she was asked to put her signature thereon without realizing the consequences and thinking that the same would validate her relationship with the petitioner. She further stated that the petitioner repeatedly kept physical relationship with her with the assurance that he would definitely marry her and also convince his family members but actually he did not have any such intention.

7. Mr. P. Tripathy submits that in view of the statement of the victim as above, it is evident that the so called marriage is not a marriage in the eye of law and therefore, the physical relationship between the petitioner and the victim cannot in any manner be validated as the

consent of the victim, was obtained because of her misconception.

8. Having heard the parties, this Court is of the view that the truth of the contention put forth at this stage and the materials available on record are not required to be gone into in detail. The materials produced by the prosecution are to be sifted only for the limited purpose of forming a presumptive opinion as regards the commission of alleged offence by the accused. Such exercise is not meant to ascertain whether the materials are sufficient to record a finding of conviction or not. At this stage if the materials on record are adequate for the Court to form a strong suspicion that the accused may have committed the offence, the same is enough to frame charge. This is also the settled position of law.

9. Having regard to the principles of law referred above and the facts of the case, this Court is of the view that the contentions advanced by the petitioner are such as can be considered only at the time of trial but not at the stage of framing charge/discharge. On the other hand,

the materials on record are adequate for the Court to presume that accused had committed the offence. In other words, if the materials on record are viewed objectively, they give rise to a strong suspicion that the accused has committed the alleged offence. Therefore, this Court holds that no case of discharge is made out and hence, the petitioner, seeking the same was rightly rejected by the court below.

10. In the result, I find no reason to interfere with the impugned order. The CRLREV is therefore, dismissed.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 23rd December, 2022/ A.K. Rana.