

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 3547 of 2022

Sultan Khan

.... **Petitioner**
Mr. A. Pattanaik, Advocate

-Versus-

State of Odisha

.... **Opposite Party**
Mr. S.S.Mohapatra, ASC

CORAM:
JUSTICE R.K.PATTANAİK

ORDER
07.12.2022

Order No.

01.

1. Heard learned counsel for the petitioner and Mr. Mohapatra learned counsel for the State-opposite party No.1.

2. Instant petition under Section 482 of Cr.P.C. is filed by the petitioner challenging the order of cognizance dated 24th August, 2022 passed in G.R. Case No. 1900 of 2022 corresponding to Purunabazar P.S. Case No. 167 of 2022 pending in the file of learned SDJM, Bhadrak confined to Section 307 IPC on the ground that the injury received by the victim to be simple in nature.

3. Copy of the F.I.R. is at Annxure-1 and the same is perused by the Court. Initially, a case under Section 307 IPC was registered against the petitioner and for the said offence, he was filed the chargesheet along with other IPC offences. A copy of the chargesheet is at Annexure-2 and the same is also perused by the Court.

4. Learned counsel for the petitioner produced a certified copy of the medical examination report of the victim to satisfy the Court that the

injuries to be simple in nature and therefore, an offence under Section 307 IPC could not have been made out and taken cognizance of by the learned court below and hence to that extent the impugned order should at least be interfered with and quashed.

5. Mr. Mohapatra, learned counsel for the State on the other hand submits that whether an offence under Section 307 IPC is made out or not depends on facts of the case which is to be examined by the learned court below and therefore, the order of cognizance at Anneuxre-3 should not be interfered with at this stage.

6. The medical examination report of the victim dated 21st July, 2022 is perused by the Court. Admittedly, nature of injuries is held to be simple. However, it is made to appear that the assault was caused by an iron rod. The manner and circumstances under which the alleged incident happened stands described in the F.I.R. (Anneuxre-1). It is made to appear that the petitioner by means of an iron rod assaulted the victim as a result of which he sustained head injuries. Notwithstanding the fact that the injuries shown to be simple, the Court is of the view that since the assault was with the help of an iron rod whether an offence under Section 307 IPC is made out or not should be left to the discretion of the court below for examination and decision thereon during and in course of enquiry and trial. In other words, the Court is not inclined to interfere with the impugned order under Anneuxre-3 as has been prayed for. However, the Court is of the view that liberty should be granted to the petitioner to challenge it at the time of framing of charge.

7. Accordingly it is ordered.

8. In the result, CRLMC stands disposed of with a liberty granted to the petitioner to raise such a ground at the time of framing of charge in connection with G.R. Case No. 1900 of 2022 corresponding to Purunabazar P.S. Case No. 167 of 2022 pending in the file of learned SDJM, Bhadrak and in the event any such application so moved, the

learned court below shall consider the same and pass appropriate orders thereon as per and in accordance with law.

(R.K.Pattanaik)
Judge