

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3552 of 2022

Chittaranjan Baral

....

Petitioner

Mr. B.S. Dasparida, Advocate

-Versus-

State of Odisha and Another

....

Opposite Parties

Mr. T.K. Praharaj, SC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

08.12.2022

Order
No.

01.

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 for quashing of the criminal proceeding in connection with 1CC Case No.1546 of 2019 corresponding to C.T. Case No.3790 of 2019 pending in the file of learned S.D.J.M., Bhubaneswar on the stated grounds.
3. A copy of the FIR is at Annexure-1 which indicates that Nayapalli P.S. Case No.385 of 2019 was registered under Section 376 IPC and other allied offences.
4. Learned counsel for the petitioner submits that the petitioner and opposite party No.2, namely, the informant have had a consensual relationship and as such, no offence of rape can be alleged. It is further submitted that notwithstanding such a relationship between the parties, case under Section 376 IPC has

been registered. According to the learned counsel for the petitioner, notwithstanding registration of the case in 2019, till date chargesheet is not filed and that apart, opposite party No.2 has in the meantime married elsewhere. Considering the above facts, learned counsel for the petitioner referring to a decision of the Apex Court in **Sambhu Kharwa Vrs. State of Utter Pradesh and Another (2022) 88 OCR (SC) 1** submits that such a criminal proceeding involving an offence under Section 376 IPC cannot be sustained in law. An agreement between the petitioner and opposite party No.2 as at Annexure-2 which was entered into at the local PS is drawn to the attention of the Court by learned counsel for the petitioner to suggest that there was a monetary transaction and in that connection, an amount of Rs.50,000/- was paid and received by the parties with an agreement that rest amount of Rs.3.5 lac to be refunded within a stipulated time. In course of hearing, learned counsel for the petitioner submits that while not pressing the matter on merit, in the above facts and circumstances of the case, at least the petitioner should be directed to surrender before the learned court below and released on bail which would serve the purpose for the present. Mr. Praharaj, learned counsel for the State opposed to the quashing of the criminal proceeding considering the gravity of the alleged offence.

5. On a bare reading of the FIR i.e. Annexure-1, the Court finds that the complaint was filed and apparently, the parties had been in a relationship and therefore, under circumstances narrated therein, the informant, namely, opposite party No.2 approached the Court and also considering the fact that the parties appeared to have a dispute with regard to monetary transaction which opposite party No.2 claims to have parted with, the Court is of the view that the petitioner should be directed to surrender before the learned court below and released on bail with conditions.

6. Accordingly, it is ordered.

7. In the result, CRLMC stands disposed of with a direction to the petitioner to surrender before the court of learned S.D.J.M., Bhubaneswar on or before 22nd December, 2022 in connection with C.T. Case No.3790 of 2019 corresponding Nayapalli P.S. Case No.385 of 2019 arising out of ICC Case No.1546 of 2019 and in the event he surrenders within the stipulated time, the court below shall release him on bail subject to conditions as deemed just and proper in the facts and circumstances of the case.

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

(R.K. Pattanaik)
Judge



TUDU