

**Mohammad Hassan and anr. Vs. Asraf Alli Khan and anr.**

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**Court :** Orissa

**Decided On :** Jun-25-1999

**Reported in :** 1999(II)OLR163

**Judge :** P.K. Misra, J.

**Acts :** [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 482; Indian Penal Code (IPC) - Sections 34 and 363

**Appeal No. :** Criminal Miscellaneous Case No. 1646 of 1998

**Appellant :** Mohammad Hassan and anr.

**Respondent :** Asraf Alli Khan and anr.

**Advocate for Def. :** P.N. Pattnaik, Adv. (OP-1)

**Advocate for Pet/Ap. :** D. Panda, S.R. Mohapatra, B.R. Mohanty and G.P. Panda

**Disposition :** Case allowed

**Judgement :**

P.K. Misra, J.

1. This application has been filed Under Section 482, Code of Criminal Procedure, 1973 (in short, the 'Cr.P.C') for quashing G.R.Case No. 236 of 1997, corresponding to Purighat P.S.Case No. 41 of 1997 in the file of the Sub-Divisional Judicial Magistrate, Cuttack. The application has been filed by the accused and the alleged victim.

2. Case had been registered Under Section 363/34, Indian Penal Code. The FIR had been lodged by the father of the present petitioner No. 2. It was alleged that the age of the present petitioner at the time of the alleged occurrence was less than 16 years. The petitioners have sought for quashing the proceeding on the ground that petitioner No. 2 had voluntarily left with petitioner No. 1. It is claimed in the petition that the age of petitioner No. 2 was more than 18 years at the time of the alleged occurrence. The father of petitioner No. 2 has been impleaded as opp. party No. 1 and upon notice has entered appearance. He has opposed the prayer for quashing the criminal proceeding on the ground that the age of petitioner No. 2 was less than 16 years at the time of the alleged occurrence. Both the petitioners have filed documents issued by appropriate marriage authority indicating that they have married each other. It is also stated on affidavit as well as supported by certificate that the two petitioners are blessed with a child. It is thus evident that the two petitioners are living together as husband and wife and are already blessed with a child. Keeping in view all these aspects, it would be an abuse of the process of Court if the criminal proceeding is allowed to continue. Even assuming that petitioner No. 2 was less than 18 years of age at the time of alleged occurrence, keeping in view the principle decided in the decision reported in (1993) 6 OCR 186 (Babu alias Sita Kuniari Agarwal v. Officer-in-Charge, Purighat and 3 others) it would be in the interest of justice to quash the criminal proceeding as the accused

and the alleged victim are married to each other and are, in fact, blessed with a child.

3. For the aforesaid reasons, the criminal proceeding in G.R.Case No. 236 of 1997, corresponding to Purighat P.S.Case No. 41 of 1997 in the file of the Sub-Divisional Judicial Magistrate, Cuttack, is quashed.

4. It is stated that on similar allegations, complaint case bearing number ICC case No. 148 of 1997 is also pending in the Court of the Sub-Divisional Judicial Magistrate, Cuttack. For the reasons indicated above, the proceeding in ICC Case No. 148 of 1997 also stands quashed.

The Criminal Misc. Case is accordingly allowed.

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