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**(2025) 12 OHC CK 0035**

**Orissa HC**

**Case No:** Criminal Revision No. 984 Of 2025

Hrushikesh Naya

APPELLANT

Vs

State Of Odisha And Another

RESPONDENT

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**Date of Decision:** Dec. 9, 2025

**Acts Referred:**

- Bharatiya Nagarik Suraksha Sanhita, 2023-Section 223
- Indian Penal Code, 1860-Section 376(2)(n), 506

**Hon'ble Judges:** R.K. Pattanaik, J

**Bench:** Single Bench

**Advocate:** S.K. Nayak

**Final Decision:** Allowed

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**Judgement**

R.K. Pattanaik, J

1. 1. Heard Mr. Mr. Nayak, learned counsel for the petitioners and Mr. Swain, learned AGA for the State.

2. No notice is issued to opposite party No.2 as the same is considered not necessary.

3. Instant revision petition is filed by the petitioner assailing the impugned order dated 3rd November, 2025 passed in connection with 1CC Case No.11 of 2025 by the learned J.M.F.C.(City), Balasore on the grounds stated.

4. Referring to the Court's order in CRLREV No.614 of 2025 as at Annexure-7, it is submitted to the Court by Mr. Nayak, learned counsel for the petitioner that the earlier order of cognizance was set aside for non-compliance of Section 223 BNSS and it was followed by a notice and reply as per Annexure-8 but without considering the same, the impugned order of cognizance dated 3rd November, 2025 at Annexure-10 has arrived. The further submission is that the order of cognizance i.e. Annexure-10 is not legally tenable for having not considered the reply/defence of the petitioner in view of Annexure-8, hence, therefore, the same is liable to be interfered with and

set aside.

5. Recorded the submission of Mr. Swain, learned AGA for the State.

6. In fact, initially a report was lodged by opposite party No.2 and it led to the submission of a final report i.e. Annexure-4, consequent upon which, the protest petition was entertained and therein, the impugned order dated 3<sup>rd</sup> November, 2025 at Annexure-10 has been passed by the learned court below.

7. From Annexure-7, the Court finds that the order of cognizance was interfered with previously for non-compliance of Section 223 BNSS and later thereto, with a notice to the petitioner, the learned court below reiterated the view and concluded that a prima facie case is made out against the petitioner for the alleged offences and it has been followed by Annexure-10. A copy of the reply of the petitioner is as per Annexure-8 with a detail defence against the complaint and the same is gone through. But, from the impugned order at Annexure-10, the Court further finds that there has been no discussion with reference to Annexure-8. In fact, from Annexure-9, the Court finds that a hearing was held on 10th October, 2025 and after a month, the impugned order at Annexure-10 was passed. Even though the learned court below apparently on a subjective satisfaction held that a case is made out for offences under Sections 376(2)(n) and 506 IPC and took cognizance of the same as against the petitioner but there has been no any discussion with regard to the defence put forth. According to the Court, it was for the learned court below to reflect upon the defence of the petitioner while proceeding to consider taking cognizance of offences followed by the impugned order i.e. Annexure-10. It is of course, not required for a court to assign detail reasons while considering the defence of an accused after notice in terms of Section 223 BNSS but the decision should refer to the reply before an order of cognizance to arrive, an exercise which does not appear to have been undertaken by the learned court below in the case at hand. Rather, it is noticed that the impugned order of cognizance is a cryptic order and it does not even reveal as to if the learned court below has taken judicial notice of the reply or defence received from the petitioner as per Annexure-8. The Court is, therefore, of the humble view that the impugned decision by order dated 3rd November, 2025 suffers from legal infirmity as it has not reflected upon the ground of defence pleaded by the petitioner. In other words, the Court is of the conclusion that the decision on taking cognizance of the offences vis-à-vis the petitioner cannot be sustained in law for the reasons stated above, hence, the same is liable to be set at naught followed by the direction herein below.

8. Accordingly, it is ordered.

9. In the result, the revision petition stands allowed. As a necessary corollary, the impugned order dated 3rd November, 2025 is hereby set aside with a direction to the learned J.M.F.C.(City), Balasore to freshly consider taking cognizance of the offences alleged and to pass appropriate order in accordance with law. It is also directed that the learned court below shall examine the defence of the petitioner as per Annexure-8 and thereafter, to pass a reasoned order at the earliest preferably within a period of three weeks from the date of receipt of a copy of this order and of course, it shall be only after providing opportunity of hearing to opposite party No.2.

10. Issue urgent certified copy of this order as per rules and in course of the day.