

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2480 of 2011

Prakash Chandra Agrawal

Petitioner

Mr. B. Sahoo, Advocate

-Versus-

State of Odisha and another

.... Opposite Parties

Mr. S.S. Mohapatra, ASC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

25.08.2022

Order
No.

- 08.
1. Heard learned counsel for the petitioner and learned counsel for the State.
 2. Notice vis-à-vis opposite party No.2 is not yet issued though the requisites had been filed in 2011 itself as claimed by the learned counsel for the petitioner.
 3. Present petition under Section 482 Cr.P.C. is filed by the petitioner questioning the correctness, legality and judicial propriety of the impugned order dated 4th May, 2007 passed in Criminal Revision No.14 of 2007 by the learned Sessions Judge, Sambalpur on the grounds stated therein.
 4. Perused the impugned order dated 4th May, 2007 as at Annexure-1 and Zimanama dated 30th February, 2007 under Annexure-3 and also rejection order dated 22nd February, 2007 under Annexure-4 series, whereby, release of the seizure items in favour of opposite party No.2 was declined by the court of learned S.D.J.M., Sambalpur.

5. Learned counsel for the petitioner submits that the seizure items have been given in his zima under Annexure-3 which was no doubt recovered from the possession of opposite party No.2. It is further submitted that opposite party No.2 after rejection vide Annexure-4 series for taking custody of the seized items moved the revisional court in Criminal Revision No.14 of 2007 without impleading the petitioner a party and snatched away the impugned order under Annexure-1 whereby the prayer was allowed with a direction that 44 pieces of aluminum ingots which are lying in zima of the petitioner shall be released in his favour subject to execution of security tune of Rs.1 lac. It is contended that the petitioner was not made a party and fact of release of the seizure items under Annexure-3 was never brought to the notice of the revisional court as a result of which the impugned order under Annexue-1 came to be passed which is not tenable in law. The learned counsel for the State on the other hand submits that the revisional court having appreciated the contention of opposite party No.2 passed the order under Annexure-1 which not to be interfered with.

6. On a reading of the impugned order under Annexure-1, it appears that the revisional court directed release and custody of the seized items in favour of opposite party No.2 and the petitioner does not seem to be made a party in that proceeding. It does not either reveal from the order that at any point of time, opposite party No.2 did bring the fact of release of seizure items under Annexure-3 in favour of the petitioner. Had it been so, revisional court could not have passed the impugned order without hearing the petitioner. In the present case, opposite party No.2 is not yet summoned, inasmuch as, the requisites though filed as is claimed by the learned counsel for the petitioner, no notice could be issued and this Court is of the view that no real purpose would be served by

issuing a fresh notice now after a long lapse time since almost ten years have elapsed in the meantime. Having considered the submissions of the learned counsel appearing for the petitioner and State, the Court is of the view that that the petitioner should be provided an opportunity to participate in the hearing before the revisional court where he was not made a party and not even impleaded by opposite party No.2 the fact which is also not challenged by the State and that appears to serve the purpose and meet the ends of justice. Having said that, the Court is inclined to set aside the impugned order dated 4th May, 2007 in order to facilitate a fresh adjudication of the competing claims vis-à-vis the items released under zimanama i.e. Annexure-3 in favour of the petitioner with his participation in juxtaposition to the rights of opposite party No.2.

7. Accordingly, it is ordered.

8. In the result, the CRLMC stands allowed, As a necessary corollary, the impugned order dated 4th May, 2007 passed in Criminal Revision No.14 of 2007 by the learned Sessions Judge, Sambalpur is hereby set aside with a direction that on the participation of the petitioner, there shall be an adjudication with regard to the respective claims over the seizure items already released vide Annexure-3 and that the proceeding to be expedited for its disposal preferably within a period of three month from the date of receipt of a copy of above order.

9. The CRLMC stands disposed of.

(R.K. Pattanaik)
Judge