IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.790 of 2011

T.A. Sampath Kumar. .... ***Petitioner***

-versus-

Asst. Registrar Co. Orissa & another. .... ***Opposite Parties***

CORAM: JUSTICE S.PUJAHARI

ORDER
27.07.2022

Order No.

11. 1. This matter is taken up through Hybrid mode.

2. The petitioner in this application under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") has prayed for quashing of the order dated 18.02.2008 passed by the learned Addl. Chief Judicial Magistrate (Special), Cuttack in 2(C) C.C. No.504 of 2006 rejecting his petition for discharge.

3. Mr. D.P. Dhal, learned senior counsel appearing for the petitioner submits that in spite of the materials available with the trial Court that the petitioner was neither an Officer nor any way concerned in the affair of the said Company as required under Section 5 of the Companies Act, to prosecute him for the offence, still he has been proceeded with in the aforesaid case.

The trial Court also did not consider the prayer made by the petitioner in proper perspective by verifying the record and rejected the prayer made to drop the proceeding against him vide the impugned order. In similar facts and circumstances this Court had also allowed some prayer, one of such case is 2(C) C.C. No.509 of 2006 and, as such, the impugned order may be quashed.

4. Mr. Satyabrata Panda, learned C.G.C. for the opposite party no.1 submits that the petitioner made a prayer for discharge in a case triable by summary procedure where the question of discharge is foreign one. However, he submits that if the petitioner was at all no way concern with the Company, as such, he is not liable for the offence committed, option is available to him to produce the document in the trial Court and the trial Court would take note of the same and dispose of the aforesaid proceeding. Furthermore, it is submitted that this Court in a similar case in CRLMC No.1459 of 2008 passed the following order;

> "Heard learned counsel for the petitioner and the learned counsel for the State.
>
> In this application under Section 482 Cr.P.C. the petitioner has sought to challenge the order dated 28.3.2006 taking cognizance against the petitioner under section 162 of the Companies Act in 2(C) CC No.509 of 2006, inter alia, on the ground that he is not the Principal Officer of M/s. Money Craft Sugars and Chemicals Ltd. nor the Director of the said Company. Learned counsel for the petitioner submits that the petitioner had been appointed as an Asst. Software Manager of M/s. Money Craft Software and Systems Ltd. and has no connection with the default Company. He also brings to my notice that an application has been filed by the petitioner under section 227 Cr.P.C. in 2(C) CC No.509 of 2006 before the A.C.J.M. (Spl.), Cuttack and the same is pending consideration.

> In view of the above, I am not inclined to entertain this application at this stage. Accordingly, the CRLMC is disposed of with a direction to the learned A.C.J.M. (Spl.), Cuttack to dispose of 2(C) CC No.509 of 2006 at an early date preferably within a period of three months from the date of communication of this order."

5. Taking note of the aforesaid facts and circumstances of the case, so also the submission advanced on behalf of the learned counsel for the parties and the decision as rendered by this Court in CRLMC No.1459 of 2008 quoted supra, this Court dispose of this petition with a direction to the petitioner to raise the contention before the trial Court, i.e., the learned A.C.J.M. (Special), Cuttack to consider the same while disposing of the case. The proceeding be disposed of expeditiously, i.e., preferably within a period of three months of receipt of the copy of this order.

6. With the aforesaid order, this CRLMC stands disposed of.

7. A copy of this order be communicated to the learned A.C.J.M. (Special), Cuttack forthwith.

8. Urgent certified copy of this order be granted on proper application.

(S. Pujahari)
Judge

MRS