

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1395 of 2012

Mithun Biswas.

....

Petitioner

-versus-

Pritam Samanta.

....

Opposite Party

CORAM: JUSTICE S.PUJAHARI

ORDER

13.04.2022

Order No.

05.

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 of cognizance dated 01.12.2011 passed by the learned S.D.J.M., Jharsuguda in C.T. Case No.4699 of 2011 taking cognizance of the offence under Section 138 of the N.I. Act.
3. Heard the learned counsel for the petitioner and the learned counsel for the opposite party.
4. It is the contention of the learned counsel for the petitioner that in this case the accused-petitioner is residing outside the jurisdiction of the Court and the trial Court without

examining any of the witnesses under Section 202 of Cr.P.C. could not proceed against the petitioner.

5. However, the learned counsel for the opposite party would submit that the aforesaid is not a requirement in a proceeding under Section 138 of the N.I. Act.

6. No doubt, the Court is entitled to take cognizance on filing of the complaint petition and recording of the statement of the witnesses. Since in the present proceeding the complainant-opposite party has already tendered his evidence by way of affidavit, his physical presence is not required, so also when the Court from the complaint filed supported by affidavit see that an offence has been committed under Section 138 of the N.I. Act, without going through the enquiry under Section 202 of Cr.P.C. can take cognizance of the offence and proceed against the accused named if satisfied of his involvement. But, there being a clear mandate that when the accused is residing outside the jurisdiction of the Court, the Court is not empowered to proceed against the accused, even if cognizance has been taken, without recording the evidence under Section 202 of Cr.P.C. to satisfy himself regarding the complicity of the accused.

7. In this case, since the aforesaid having not been done, as seen from the impugned order, this Court quashes the summon issued against the petitioner and directs the Court in seisin over the matter to adhere to the enquiry under Section

202 Cr.P.C. by taking evidence through affidavit of the complainant witnesses and being satisfied regarding the complicity of the accused-petitioner from the materials available on record, to proceed against him.

8. Needless to say that the aforesaid exercise must be done by the trial Court within a month of receipt / production of the certified copy of this order. It is further made clear that as the accused-petitioner is not required to have his say in such proceeding, he should not be allowed to participate in the said proceeding, before the Court issues summon to him on being satisfied of his involvement after taking note of the evidence tendered under Section 202 of Cr.P.C.

9. With the aforesaid order, this CRLMC stands disposed of being allowed.

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

(S. Pujahari)
Judge

MRS