

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.268 of 2022

Sushanta Sahu @ Bitu *Petitioner*
-versus-
State of Orissa *Opposite Party*

CORAM: JUSTICE S. PUJAHARI

ORDER
04.08.2022

Order
No.

03. 1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order dated 23rd October, 2021 passed by the learned J.M.F.C., Kantamal in C.T. No.101 of 2019 wherein cognizance of the offence under Section 395 of the I.P.C. has been taken.
3. Heard the learned counsel for the Petitioner and the learned counsel for the State.
4. The Petitioner has sought for quashment of the cognizance in a case under Section 395 of I.P.C. The trial court has taken cognizance on the aforesaid offence against the Petitioner. As he was absconding, the trial court has issued N.B.W.(A) against him. The Petitioner has come to this Court challenging the same on the ground that no material whatsoever is there against him.

5. Learned counsel for the State drawing the notice of the court to the materials on record, submits that sufficient materials are there to take cognizance of the offence as well as to proceed against the Petitioner. As such, the prayer made by the Petitioner for quashment of the order of cognizance and the proceeding is without any substance.

6. Considered the facts and submissions made by the learned counsel for the parties and from the materials placed before this Court, it appears that prima facie materials are there to take cognizance of the offence under Section 395 of I.P.C. and also proceed against the Petitioner. Therefore, the prayer made that without any material the Petitioner has been proceeded with and, as such, the order of cognizance and the proceeding against him is liable to be quashed, as submitted by the learned counsel for the Petitioner, is devoid of merit.

7. Accordingly, the Criminal Misc. Case is dismissed.

8. However, it is submitted by the learned counsel for the Petitioner that the Petitioner intends to surrender and move for bail before the court below and as such, direction may be given to the court below to allow him on bail. But, the Petitioner appears to have moved this Court in a pre-arrest bail, which was not allowed. So, this Court in exercise of power under Section 482 of Cr.P.C. cannot allow such prayer made.

9. But, taking note of the facts and circumstances, however, it is observed that if the Petitioner surrenders and moves for bail before the Court in seisin over the matter, the Court in seisin over the matter shall dispose of his bail application as early as possible, preferably on the same day, if there is no legal impediment. The said order, however, does not prevent the police to execute the N.B.W.(A) against him.

(S. Pujahari)
Judge

DA

