

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.5624 of 2014

Arun Kumar Samal *Petitioners*
-versus-
Santosh Kumar Patri *Opposite Party*

CORAM: JUSTICE S. PUJAHARI

ORDER

04.07.2022

Order
No.

05. 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 set aside the order dated 23rd August, 2014 passed by the learned J.M.F.C., Kendrapara in I.C.C. No.437 of 2013 vide Annexure-1 Series wherein dismissing the complaint case on default and restore the said complaint case to file for adjudication on merit.
3. Heard the learned counsel for the Petitioner. No one appears on behalf of the Opposite Party.
4. As it appears, the Petitioner had filed a complaint under Section 138 of N.I. Act which came to be transferred in his absence to another court pursuant to the order of the learned District Judge, Kendrapara. Thereafter, in the transferee court, the case was posted

earlier on two occasions wherein the complainant makes default to appear. In the third occasion, when the Petitioner-Complainant did not appear, the case was dismissed and the accused-Opposite Party was acquitted under Section 256 of Cr.P.C.

5. From the order sheet, it is not revealed that the Petitioner though had notice of transfer of the case to transferee court, still he made the default.

6. Considering the aforesaid fact and submissions made, this Court is of the view that the default is bona fide one. Hence, the trial court could not have dismissed the compliant under Section 256 of Cr.P.C.

7. Accordingly, the CRLMC is allowed. Consequently, the impugned order is set aside. Learned J.M.F.C., Kendrapara is directed to restore the aforesaid case to file. However, the Petitioner must produce a copy of this order before the court concerned within three weeks hence and seek instruction from the court concerned with regard to posting of the case, so also he shall cooperate for early disposal of the case.

(S. Pujahari)
Judge