

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLMC No.369 of 2020**

Prakash Agarwal

• • • •

***Petitioner***

*versus-*

***Mahesh Kumar Agarwal***

• • • •

*Opposite Party*

**CORAM: JUSTICE S. PUJAHARI**

**Order**  
**No.**

**ORDER**  
**13.07.2022**

12.
  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 6<sup>th</sup> January, 2018 passed by the learned J.M.F.C., Cuttack in 1.C.C. No.189 of 2011.
  3. Heard the learned counsel for the Petitioner-Complainant and the learned counsel for the Opposite Party-accused.
  4. It appears that the case is triable by warrant procedure instituted on a complaint made by the Petitioner-Complainant. Though the case was triable by warrant procedure and when the Petitioner-Complainant did not appear before the court below, the trial court resorting Section 256 of Cr.P.C., which is foreign to such a trial of a case instituted other than police report inasmuch as Section 256 of Cr.P.C. is only applicable to a case instituted otherwise on a police report in a summon procedure.

the learned Magistrate passed the impugned order. Challenging the same, the Petitioner has come to this Court.

5. It is submitted by the learned counsel for the Petitioner-Complainant that non-appearance of the Petitioner-Complainant was bona fide one and, as such, the learned Magistrate could not have adhere to the same. Therefore, the impugned order being without jurisdiction, the same be set aside and the learned Magistrate be directed to restore the complaint to file and proceed in the matter in accordance with law.

6. Learned counsel for the Opposite Party-accused submits that since Section 256 of Cr.P.C. speaks of acquittal, against the same, an appeal is maintainable in view of the provision under Section 372 of Cr.P.C. Against the acquittal order, the Petitioner-Complainant could have approached the court of sessions, but he has filed this petition under Section 482 of Cr.P.C challenging the same.

7. However, the learned Magistrate should not acquit the Opposite Party-accused taking resort to Section 256 of Cr.P.C. which is absolutely no application to this case. In such premises, contention of the learned counsel for the Opposite Party-accused on the maintainability of the petition is without any substance.

8. Hence, this Court allows this Criminal Misc. Case. Consequently, the impugned order is set aside and the

learned J.M.F.C., Cuttack is directed to restore the complaint, i.e., 1.C.C. No.189 of 2011 to its file and disposed of the same expeditiously, preferably within six months of receipt of copy of this order. Parties shall cooperate in disposal of the case within time stipulated.

***(S. Pujahari)***  
***Judge***

*DA*

