

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.466 of 2020

Shiva Dutta Naik

....

Petitioner

-versus-

State of Odisha and another

....

Opposite Parties

CORAM: JUSTICE S.PUJAHARI

ORDER

26.07.2022

Order No.

03.

1. This matter is taken up through Hybrid mode.
2. Heard the learned counsel for the Petitioner and the learned counsel for the State.
3. The petitioner seeks for quashing of the proceeding in 1.C.C. No.628 of 2014 in the court of the S.D.J.M, Sadar, Cuttack on the ground that for the selfsame cause of action vide G.R. Case No.92 of 2015 he has already been prosecuted and convicted by the learned Addl. C.J.M.-cum-Asst. Sessions Judge, Cuttack as per his judgment dated 18.05.2019.
4. The case of the Petitioner is that on the allegation that the cheque drawn by him in favour of the complainant/O.P. was dishonoured, he is facing a prosecution under Section 138 of the N.I. Act in 1.C.C. No.628 of 2014 in the court of the S.D.J.M., Sadar, Cuttack. However, for the allegation that he had drawn the said cheque to discharge the debt / liability arising out of non-providing a plot to the complainant as per

agreement, there was instituted a police case vide G.R. Case No.92 of 2015 at the instance of the complainant, and in the said case, the petitioner on being prosecuted was convicted under Sections 406/420 of IPC, and the said judgment is under challenge in Appeal. It is thus the contention of the Petitioner that for the selfsame cause of action, a second case is incompetent, inasmuch as the same is hit by Section 300 of Cr.P.C. In such premises, challenge is made to quash 1.C.C. Case No.628 of 2014 as being incompetent.

5. However, learned counsel for the Opposite Parties submits that the contention of the petitioner is without any substance. It is submitted by him that the proceeding in G.R. Case No.92 of 2015 was quite distinct and different, inasmuch as in the said case the Petitioner was prosecuted and convicted for different offences, such as, cheating etc. under the Indian Penal Code. But, for dishonor of the cheque furnishing different cause of action, the complaint under the N.I. Act was filed. The Petitioner is participating in the trial of the said complaint case and the matter being at the stage of disposal, the Petitioner with ulterior motive has approached this Court at such belated stage seeking for quashment of the same under Section 482 Cr.P.C. in order to protract the trial. The opposite parties urge this Court not to exercise its inherent power to quash the proceeding, on the ground so stated.

6. Having heard the learned counsel for the parties and on going through the materials on record, this Court does not feel it proper to express any opinion at this stage, and leaves the

question open to be decided by the trial Court, inasmuch as the question now raised belatedly by the petitioner for quashing of the proceeding ought to have been raised by him at the earliest opportunity. If the petitioner raises this question before the trial Court, the same shall be addressed in right perspective keeping in view the doctrine under Section 300 of Cr.P.C., by the learned trial Court in the judgment.

7. With the observation and direction as above, this CRLMC stands dismissed.

(S. Pujahari)
Judge

Uks

