IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2399 of 2015

Pradosh Mohapatra .... ***Petitioner***

-versus-

Khurda Municipality & another .... ***Opposite Parties***

CORAM: JUSTICE S.PUJAHARI

ORDER
17.08.2022

Order No.	
04.	1. This matter is taken up through Hybrid mode.

2. Heard learned counsel for the parties.

3. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the impugned orders passed by the learned S.D.J.M., Khurda in 3(a)CC No.4 of 2014.

4. The Petitioner has challenged the prosecution launched against him under Section 383(1)(a) of the Orissa Municipal Act for non-payment of the tax vide 3(a)CC No.4 of 2014 in the court of learned S.D.J.M., Khurda. The Petitioner has challenged the same on the ground that he had no liability inasmuch as he is a lessee of the IDCO and he has to pay the tax to the IDCO and in turn the IDCO will pay the same to the Municipal Corporation. In this regard, the Petitioner has drawn Clause-7 of the agreement made with IDCO, which reads as thus:

> "7. The lessee shall pay all existing and future rates and tax charges, claims, assessments outgoing of any descriptions chargeable against the Lessor or occupier in respect of the allotted land and building erected thereon."

5. A perusal of the aforesaid would go to show that the contention advanced by the learned counsel for the Petitioner appears to be on a misinterpretation of the aforesaid clause. No where it is mentioned that the lessee has no liability to pay the taxes. Rather Clause-7 speaks that he is liable to pay the tax to the appropriate authority. Furthermore, another contention advanced in this case is that since IDCO has written Municipal Corporation that they have not developed the area and the maintenance being taken by IDCO, the Municipal Authority is not entitled to claim any tax. Drawing notice to a letter of IDCO, it is submitted that the Petitioner is not liable to pay the tax, as such the prosecution launched against him is misconceived. However, the aforesaid is a mixed question of fact and law. In such premises when prima facie allegation has been made against the Petitioner for non-payment of tax inasmuch as it is never his case that he has paid the tax, this Court finds no infirmity in taking cognizance of the offence and proceeding against the Petitioner and as such this petition being devoid of merit is liable to be dismissed and accordingly the same stands dismissed.

6. However, at the stage, learned counsel for the Petitioner submits that the case being trivial in nature and due to default of the conducting counsel, N.B.W (A) has been issued, it is directed that if the Petitioner surrenders before the court in

seisin over the matter and moves for bail within four weeks' hence, the court in seisin over the matter shall allow him to go on bail on such terms and conditions as it may deem just and proper. If the Petitioner does not surrender within the time stipulated, there is no impediment to execute the N.B.W.(A) issued against the Petitioner thereafter. So also thereafter if the Petitioner files a petition under Section 317 Cr.P.C., the court, notwithstanding the dismissal of the earlier petition, shall dispense with the personal appearance of the Petitioner taking note of the fact that the Petitioner is stated to be a businessman on such terms and conditions as it may deem just and proper.

7. With the aforesaid order, this CRLMC stands disposed of.

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

(S. Pujahari)
Judge

PKS