

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 831 of 2020

**M/s. Keshari Estates
Pvt. & Anr.**

...

Petitioner

Mr. S.K. Sarangi, Advocate

- Versus -

State of Odisha & Anr.

...

Opposite Parties

Mr. P. Tripathy,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

27.01.2022

Order No.

1.

1. This matter is taken up through virtual mode.
2. Heard learned counsel for the petitioners and learned Addl. Standing Counsel.
3. The petitioners are facing trial in ICC Case No. 5752 of 2016, which is a complaint under Section 138 of N.I. Act filed by the complainant-opposite party no.2. A petition was filed on behalf of the accused persons on 03.01.2020 seeking dispensation of their personal attendance as also for exemption of the examination under Section 313(1)(b) of Cr.P.C. The said petition came to be rejected by learned Court below vide order dated 18.02.2020 on the ground that the medical prescription submitted by the accused is dated 18.11.2019 and there is nothing on record to show that the accused is bedridden or unable to attend the Court.
4. Mr. S.K. Sarangi, learned counsel appearing for the petitioners submits that the petition was filed in the year 2020 and presently also, the petitioner no.2 is ailing, having recovered from a massive cardiac attack. As such, it is not possible on his part to

attend the Court personally. Since his personal attendance had already been dispensed with under Section 205 of Cr.P.C. and the case is a summons case, the proviso to Section 313(1)(b) of Cr.P.C. squarely applies to his case. It is further submitted that given an opportunity, the petitioner can also furnish all necessary medical papers for appreciation of the Court.

5. Having regard to the submissions made, this Court is of the view that ends of justice would be best served by granting one more opportunity to the petitioners in the matter.

6. The CRLMC is therefore disposed of by quashing the impugned order and by granting liberty to the petitioners to file a better application seeking exemption of recording of the statement under Section 313 of Cr.P.C.. It goes without saying that if such an application is filed, the same shall be considered by the learned Court below having regard to the relevant statutory provisions as also the facts and circumstances of the case.

7. As the restrictions due to resurgence of Covid-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No. 4587, dated 25th March, 2020, modified by Notice No. 4798, dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos. 514 and 515 dated 7th January, 2022.

(Sashikanta Mishra)
Judge