

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1503 of 2018

Pramod Kumar Panda

.... Petitioner
Mr. L. Pradhan, Advocate

-Versus-

Mahammad Tufail

.... Opposite Party
Mr. S.C. Puspalka, Advocate for O.P.

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
02.12.2022

Order
No.

01.

1. Heard learned counsel for the petitioner and learned counsel for the opposite party.
2. Instant petition under Section 482 Cr.P.C. is filed by the petitioner challenging the correctness and legality of the order cognizance order dated 21st February, 2018 under Annexure-2 in connection with ICC No.35 of 2017 pending in the file of learned S.D.J.M, Bhawanipatna on the grounds stated therein.
3. Learned counsel for the petitioner submits that before expiry of fifteen days, the complaint was filed and therefore, the learned court below was not competent to take cognizance of the offence under Section 138 NI Act and hence, the criminal proceeding in ICC No.35 of 2017 cannot be sustained in law and thus, liable to be quashed.
4. Learned counsel for the opposite party submits that the offence was taken cognizance of by the learned court below as is evident from Annexure-3, a copy of the impugned order dated 21st February, 2018 while referring to a decision of this Court in **M/s Pragati Ventura Pvt. Ltd. Vrs. M/s Jasmine Road Lines (2014) 59**

OCR 2011 which is to the effect that even if the complaint was filed prior to the expiry of fifteen days notice, the same cannot be said to be incompetent since bar is only for the purpose of taking cognizance and not for filing of the complaint.

5. Considering the above submissions, without expressing anything on merits, the Court is of the view that the petitioner since has an opportunity to raise such ground at a later stage, the CRLMC should be disposed of without keeping it alive leaving the parties to fight it out before the learned court below during enquiry. In other words, the petitioner is required to agitate the above ground and all such other legal points at the time of framing of charge before the learned court below in ICC No.35 of 2017.

6. Accordingly, it is ordered.

7. In the result, the CRLMC stands disposed of with liberty granted in favour of petitioner to raise all the legal grounds while seeking discharge in connection with ICC No.35 of 2017 and in the event, any such application is so moved by him, the learned S.D.J.M., Bhawanipatna shall consider the same on merit and pass appropriate order as per and in accordance with law.

8. Consequently, the interim order passed by this Court by order dated 6th November, 2018 in I.A. No.999 of 2018 is hereby vacated.

9. A copy of the above order be sent to the learned court below for reference.

10. Urgent certified copy of this order be granted as per rules.

(R.K. Pattanaik)
Judge

