

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1766 of 2012

Rajkishore Kumar and another

Petitioners

Mr. P. Ch. Jena, Advocate

-Versus-

Hemanta Kumar Panda

....

Opposite Party

None

CORAM:

MR. JUSTICE R.K. PATTANAIK

ORDER

13.05.2022

Order
No.

- 04.
1. Heard learned counsel for the petitioners. None is present for the opposite party.
 2. Application under Section 482 Cr.P.C. is filed by the petitioner challenging the order of cognizance order dated 24th August, 2011 passed in I.C.C Case No.248 of 2011 by the learned S.D.J.M., Balasore on the ground that initial statement of the complainant was not recorded in terms of Section 200 Cr.P.C. before taking cognizance of the offence which is required under in law.
 3. In fact, as revealed from impugned order i.e. Annexure-1, the learned court below vide order dated 24th August, 2011 accepted the affidavit filed by the complainant in terms of Section 145 N.I.Act along with certain documents and thereafter, proceeded and on subjective satisfaction, after considering the materials received, passed the order of cognizance under Section 138 thereof and thereafter, issued summons to the petitioners.

4. As claimed by the learned counsel for the petitioners, the statement of opposite party was not recorded as is required under Section 200 Cr.P.C. and merely by accepting the affidavit filed by him, passing of the order of cognizance vide Annexure-1 is bad in law .

5. However, on perusal of Section 145 of the N.I. Act, it appears that the complainant may submit evidence in the shape of an affidavit which is subject to all just exceptions to be read in evidence in enquiry and other proceedings notwithstanding anything contained in the Code of Criminal Proceeding, 1973. On reading of the above provision, it clearly indicates that the Act provides acceptance of affidavit filed by the complainant even for the purpose of enquiry and taking cognizance of the offence under Section 138 N.I. Act.

6. The Court is of the view that there was no need or any kind of requirement for the court below to record the initial statement of the complainant as per Section 200 Cr.P.C. and thus, rightly accepted the affidavit which is permitted in view of Section 145 N.I. Act. In such view of the matter, the impugned order under Annexure-1 passed by the court below does not suffer from any legal infirmity.

7. For the aforesaid reason, CRLMC stands dismissed.

(R.K. Pattanaik)
Judge