

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1862 of 2012

K. Mangaraju @ Mangarapu Rao

....

Petitioner
None

-Versus-

State of Odisha

....

Opp. Party
Mr. S. N. Das, ASC

CORAM:
JUSTICE R.K.PATTANAİK

ORDER
04.03.2022

Order No.

06.

1. None appears for the Petitioner when the matter is called out.
2. In fact, on the prayer of the learned counsel for the Petitioner on the last occasion i.e. 25th February, 2022, the matter was adjourned for a peremptory hearing.
3. In view of the fact that there is an interim order of stay since 3rd July, 2012, the Court is not inclined to adjourn the matter to a future date, rather, to dispose it of on merit.
4. Present application under Section 482 Cr.P.C. is filed by the Petitioner seeking a prayer to quash order dated 30th May, 2012 passed in M.C. Case No.56 of 2012 by the learned Chief Judicial Magistrate, who directed him to pay the entire of the bond amount of Rs.54,000/- as penalty under Section 446 Cr.P.C. and thus, declined to drop the proceeding as prayed for.

5. The learned Additional Sessions Judge, Jeypore, on account of default of the accused persons on 18th April, 2012, who were facing enquiry at a stage when the charges were to be framed for the offences punishable under Section(s) 341, 294, 323, 379, 354 and 506 read with 34 IPC and Section 3(1)(x) of the SC & ST (PA) Act, issued NBWs against them and transmitted the record to the learned court below to initiate a proceeding under Section 446 Cr.P.C., where after, a show cause notice was issued to the Petitioner vide Annexure-2 and considering the reply submitted, declined to exonerate and drop the proceeding against him, who was the surety and directed him to pay Rs.54,000/- vide Annexure-1 as penalty which was the bond amount.

6. Heard Mr. S.N.Das, learned Additional Standing Counsel appearing for the State.

7. Perused the record.

8. It is made to realise that the case was posted before the court concerned on 18th April, 2012 for framing of charge but then the accused persons could not appear for which NBWs were issued against them and simultaneously, on receiving the record, the learned court below initiated the proceeding under Section 446 Cr.P.C. vis-à-vis the Petitioner after forfeiture of bail bonds.

9. The Petitioner filed a show cause before the learned court below and claimed that he is a poor person and a BPL card holder and eking his livelihood with difficulty and also maintaining a large family and that apart, one of the accused persons was arrested on 19th April, 2012 and others surrendered before the court on 23rd April, 2012 considering which and the

fact that all of them have been released on bail, the proceeding under Section 446 Cr.P.C. should be dropped. However, the learned court below declined to accept the plea of the Petitioner on the ground that he violated the conditions of bail and therefore, cannot be exonerated and hence, required to pay the entire amount of Rs.54,000/- recoverable as penalty.

10. A copy of the BPL card is enclosed as Annexure-3, the genuineness of which, has not been disputed by the learned counsel for the State. The Petitioner was the surety and the accused persons since failed to appear on the date fixed i.e. 18th April, 2012, NBWs were issued forfeiting the bail bonds and thereafter, the learned court below directed him to show cause. From the order dated 18th April, 2012, it is made to understand that a petition under Section 317 Cr.P.C. was filed by the learned defence counsel, who was representing the accused persons and another petition seeking adjournment on the ground that one of the co-villager had died but both the petitions were rejected and thereafter, NBWs were issued and the Petitioner was proceeded with under Section 446 Cr.P.C.

11. It appears that the accused persons after being arrested and surrendered were granted bail by the court concerned. It is made to suggest that one of them was arrested on the very next day of the date of the default i.e. on 19th April, 2012 and others surrendered couple of days thereafter i.e. on 23rd April, 2012. No material is on record to show that the Petitioner had in anyway connived with the accused persons or responsible for their alleged default, inasmuch as, on the date fixed i.e. 18th April, 2012, the learned defence counsel rather appeared for them and had taken

steps under Section 317 Cr.P.C. and also sought for an adjournment which was of course denied.

12. However, the Court is of the considered view that under the above circumstances and subsequent arrest and surrender of the accused persons and in absence of any material to show that the Petitioner was in any way to be directly responsible for the alleged default dated 18th April, 2012, the learned court below ought to have exercised discretion to remit a portion of the penalty imposed under Section 446 Cr.P.C. In fact, sub-section (3) of Section 446 Cr.P.C. empowers the court to exercise its discretion to remit any portion of the penalty and enforce payment of a part thereof. In plethora of decisions, it has been reiterated that such power should be exercised considering the mitigating factors vis-à-vis the surety. In this regard, a reference may be had to a decision of the Supreme Court in the case of *Mohammed Kunju and another Vs. State of Karnataka* reported in 1999 (4) RCR (Criminal) 726. In the instant case, the Petitioner appears to be a BPL card holder and imposing a penalty of Rs.54,000/- without remission and that too in the backdrop of the facts narrated would subject him to financial distress and much difficulty. In other words, it is a fit case where this Court should direct remission of penalty which is statutorily available under Section 446(3) Cr.P.C. which would serve the purpose and meet the ends of justice and accordingly, it is ordered.

13. In the result, the impugned order under Annexuer-1 passed by the learned Assistant Sessions-cum-Chief Judicial Magistrate, Jeypore is hereby modified to the extent that the Petitioner shall pay a penalty of Rs.2000/- which shall be

deposited before the court within a fortnight from the date of a certified copy of the above order is received.

14. Accordingly, the CRLMC stands disposed of in the above terms.

(R.K.Pattanaik)
Judge

TUDU

