

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 1187 of 2022

Sumanta Sahu

....

Petitioner

Mr. P.K.Panda, Advocate

-Versus-

State of Odisha & Another

....

Opposite Parties

Mr. S.S.Mohapatra, ASC

Mr. Subrat Mishra, Advocate for O.P.No.2

CORAM:

JUSTICE R.K.PATTANAIK

Order No.

ORDER

22.09.2022

06.

1. Heard learned counsel for the petitioner, learned counsel for the opposite party No.2 and learned counsel for the State.

2. Instant petition is under Section 482 of Cr.P.C. is filed by the petitioner for quashing of the criminal proceeding pending before the learned court of SDJM, Talcher in connection with G.R. Case No. 302 of 2022 corresponding to Birkampur FCI P.S. Case No. 36 of 2022 on the grounds stated therein.

3. Perused the copy of the F.I.R. as at Annexure-1. In fact, after lodging of the F.I.R. by opposite party No.2, Birkampur FCI P.S. Case No. 36 of 2022 was registered under Section 456/427/34 IPC and the F.I.R. i.e. Annexure-1 describes the alleged incident dated 7th February, 2022 during which it is claimed that the petitioner committed certain overt acts. As per the informant, the petitioner is the guarantor and both the borrower and the petitioner since failed to repay the loan dues and despite several notices as no repayments were expected from them and have become defaulters of other banks as well, an application under Section 14 of the SARFAESI Act was moved to take

physical possession of the property in question latter to which by the orders of the learned Collector–cum-District Magistrate, Angul physical possession of the land as well as building was taken over and it was handed over to the Authorized Officer on 27th December, 2021. The allegation is that the petitioner after physical possession was taken over by the Authorized Officer did not allow the Security Guards to go inside the property which is being guarded from outside.

4. Learned counsel for the petitioner submits that even on a bare reading of the F.I.R., no case is made out especially with regard to the offence of trespass punishable under Section 456 IPC. It is contended that at no point of time, even as per the allegation in the F.I.R., the petitioner did enter inside the property on the dated fixed which has been under the possession of the Authorized Officer. The only allegation according to learned counsel for the petitioner is that the petitioner broke open the gate and did not allow the security guards to enter inside and allowed to guard the property from outside which indeed does not make out an offence under Section 456 IPC if at all the definition of trespass contained in Section 452 IPC is read and understood properly. Learned counsel for the opposite party No.2 strongly objected and claimed that the petitioner is the mortgager and he committed the alleged mischief despite the fact that the property in question stands in the physical possession of the Authorized Officer. Learned AGA Mr. Rout submits that prima facie there is a case made out against the petitioner since he alleged to have done the mischief by breaking open the lock of the gate which does amount to an act of trespass.

5. According to Court, prima facie considering the materials on record by reading the contents of the F.I.R. it does appear that the petitioner despite the possession of the property being with the Authorized Officer misconducted himself and broke the lock of the gate which amounts to an act of trespass. The Court is also of the

view that such a question can still be examined at the time of framing of charge. The petitioner, if so, advised can refer to all the materials including statements of the witnesses recorded under Section 161 Cr.P.C. to satisfy the learned court below that there is no trespass at all. However, from the F.I.R., the Court is of the view that breaking open the lock of the gate nevertheless an act of trespass. in any view of the matter, without expressing any view on the rival claims on the merits, the Court is of the further view that the petitioner should be provided an opportunity to raise it while seeking discharge referring to the evidence collected during the investigation to claim that there is no offence made out under Section 456 IPC.

6. Accordingly, it is ordered.

7. Consequently, the CRLMC stands dismissed with a liberty granted to the petitioner to raise the ground with regard to absence of material on trespass for an offence punishable under Section 456 IPC before the learned court below at the time of framing of charge, which on being so urged, the court below should examine the same and pass appropriate orders as per and in accordance with law.

8. As a result, the interim order stands vacated.

(R.K. Pattanaik)
Judge

I.A. No. 960 of 2022

06.

1. Learned counsel for the petitioner submits that in the present case investigation is underway and considering the nature of allegations and the petitioner being the mortgager, he should be directed to surrender and go on bail on any such terms and conditions which is objected to by the learned counsel for opposite party No.2. Copy of the order dated 8th March, 2022 passed in ABLAPL No. 1849 of 2022 by this Court is produced by the learned counsel for the opposite

party No.2 by contending that the anticipatory bail plea was rejected and the petitioner was directed to surrender and move regular bail before the learned court below within a stipulated time.

2. Learned counsel for the petitioner submits that the petitioner could not avail the order passed by this Court in ABLAPL No. 1849 of 2022 and surrender within the time as it was stipulated in the said order 8th March, 2022 and submits that the petitioner should now be directed to surrender and go on bail with any conditions considering the nature of litigation and the fact that the petitioner is the mortgager. However, the Court is of the view that the petitioner should at least be directed to surrender before the court of learned SDJM, Talcher and go on bail which would meet the ends of justice.

3. Accordingly, the petitioner is directed to surrender before the court of learned SDJM, Talcher in connection with G.R. Case No. 302 of 2022 corresponding to Bikrampur P.S. Case No. 36 of 2022 on or before 30th September, 2022 and in the event of his surrender, the court shall release him on bail with conditions.

4. Accordingly, the I.A. is disposed of.

5. An urgent certified copy of this order be issued as per rules.

(R.K. Pattanaik)
Judge