

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2701 of 2004

*Republic of India,
represented by the Superintendent
of Police, C.B.I, Bhubaneswar*

....

Petitioner

-versus-

Hemanta Kumar Jena

....

Opposite Party

CORAM: JUSTICE S. PUJAHARI

ORDER
26.04.2022

Order
No.

24.

1. This matter is taken up through Hybrid mode.
2. The Petitioner-CBI has filed this case challenging the order dated 13.08.2004 passed by the learned Addl. C.J.M., Bhubaneswar in 2(C)CC No.1 of 2002 wherein the complaint filed by the CBI against the Opposite Party has been dropped and the accused has been discharged.
3. Facts relevant for disposal of this petition are as follows:

Pursuant to the complaint made by the Opposite Party, a trap was laid against the accused, namely, Sri Ashok Kumar Das, phone Mechanic, Dehurda Telephone Exchange, Bhogarai, Balasore for demanding an illegal gratification of Rs.800/- to allow him to open a P.C.O. Pursuant to the said trap, the accused therein was trapped while accepting bribe

from a decoy- Opposite Party and the accused was put to trial vide T.R. No.8 of 2000 before the Special Judge, C.B.I, Bhubaneswar. However, the decoy- Opposite Party having not supported the case of the prosecution and resiled from his statement he stated to be acquitted. Thereafter, the aforesaid complaint was made against the accused to proceed against him under Section 211 IPC. The Addl. C.J.M., Bhubaneswar accordingly took cognizance of the offence under Section 211 IPC vide order dated 14.3.2002. However, subsequent to the same Opposite Party-accused appeared and submitted that the complainant was incompetent one as a person can only be prosecuted under Section 211 IPC on the complaint of the court concerned. Since the court had not made any complaint there and at the instance of the CBI, the court could not have taken cognizance on the same. The court is entitled to review the same in view of the ratio in the case of **K.M. Mathew vrs. State of Kerala and another** reported in (1992) 1 SCC 217. The court recalled the order of cognizance and dropped the proceeding against the accused as the same was then to be the law. Challenging the same, this petition has been filed by the CBI.

4. Heard Mr. Sarthak Kumar Nayak, learned counsel for the Petitioner-CBI so also learned counsel for the Opposite Party.

5. Needless to say that though the court has no jurisdiction to review the order of cognizance and recall the order of

cognizance, as in the meanwhile the aforesaid law laid in the case of ***K.M. Mathew (supra)*** is no more holding the field but considering the fact that the complaint at the instance of the CBI was incompetent one in view of Section 195(b) of Cr.P.C., as such, this Court does not want to interfere with the impugned order.

6. Accordingly, this CRLMC stands dismissed.

(S. Pujahari)
Judge



MRS/PKS