

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMC No. 3911 of 2012

Bhagirathi Padhy @ Bhagirathi Padhi **Petitioner**
Mr.P.K.Nanda, Advocate

-Versus-

Susanta Kumar Behera **Opposite Party**

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
22.07.2022

Order No.

11. 1. Heard learned counsel for the petitioner. None appears for the Opposite Party.
2. This is an application under Section 482 of Cr.P.C. filed by the petitioner challenging the impugned order dated 19th October, 2012 passed in I.C.C. No. 3376 of 2009 by the learned J.M.F.C., Bhubaneswar on the grounds stated therein.
3. The complaint case was filed by the Opposite Party under Section 138 N.I.Act which was proceeded with by the learned court below and lastly, when the judgment was about to be pronounced, the petitioner filed a petition for time in order to enable him to prefer a revision against an order passed under the Section 311 Cr.P.C. In fact, it appears that the petitioner moved the petition under Section 311 Cr.P.C. for recall of P.W.1, namely, the complainant for the purpose of further cross-examination which was rejected by the learned court below and thereafter, the impugned order dated 19th October, 2012 was passed keeping the judgment in a sealed cover and directing arrest of the petitioner as he was absent by then.

4. The complaint is under Section 138 N.I.Act which is at the instance of the Opposite Party. From the order of the learned court below dated 19th October, 2012, it appears that the petition under Section 311 Cr.P.C. was rejected on the ground that it had not been served upon the Opposite Party and the fact that no such record was there to show that the case had been preponed and fixed to 17th October, 2012 for that purpose.

5. Having regard to the above facts and that the petitioner filed a petition under Section 311 Cr.P.C. which was stated to be pending decision but it was not considered by the learned court below, the Court is of the view that the matter should be remitted back for a consideration so that prayer to recall the complainant for the purpose of further cross-examination may be examined, if at all, it is necessary and then to proceed and dispose of the case in accordance with law. In other words, the petitioner should be provided an opportunity for consideration of his petition filed under Section 311 Cr.P.C. which has not been decided on merit by the learned court below.

6. In the result, the CRLMC stands allowed. Consequently, the impugned order dated 19th October, 2012 is set aside with a direction that the learned court below shall consider the petition filed by the petitioner under Section 311 Cr.P.C. and thereafter to pass appropriate order thereon and then, proceed and decide the case on merit and complete the entire exercise preferably within a period of six months from the date of receipt of a copy of the above order.

(R.K. Pattanaik)
Judge

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