

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 1432 of 2022

Sribanta Samal

....

Petitioner

Mr. Naresh Ch.Jena, Advocate

-Versus-

State of Odisha & Another

....

Opposite Parties

Mr. S.S. Mohapatra, ASC

Mr. S.P.Dash, Advocate for O.P.No.2

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

21.09.2022

Order No.

01.

1. Heard learned counsel for the petitioner and learned ASC for the State as well as the learned counsel appearing for opposite party No.2.
2. Instant petition Section 482 of Cr.P.C. is filed by the petitioner challenging the impugned order dated 26th April, 2022 under Annexure-6 and also to quash the order of cognizance dated 1st December, 2018 in I.C.C. Case No. 62 of 2018 passed by the learned J.M.F.C., Aul, Kendrapara on the grounds stated therein.
3. Learned counsel for the petitioner submits that the complaint was filed and it was shown to have been entertained on 17th November, 2018 but thereafter, some manipulation was carried out as the date was changed which was mentioned as 15th November, 2018 and the purpose was to bring it with limitation and on such a complaint, the learned court below proceeded and ultimately passed the order of cognizance dated 1st December, 2018 and the same is challenged by the petitioner on the ground of manipulation and the fact that the learned court below could not have taken cognizance of the offence under

section 138 of the N.I.Act but it was not entertained. According to the learned counsel for the petitioner, the learned court below declined to recall the order of cognizance dated 1st December, 2018 on the ground that he does not have the jurisdiction. It is submitted that the alleged manipulation was carried out at the behest of the complainant in order to ensure that the complaint is filed within the time and that apart, the AD was never produced to show that it was within limitation as stipulated in the N.I.Act.

4. Learned counsel for opposite party No.2 on the other hand submits that the trial is in progress and in the meantime, couple of witnesses have already been examined from the side of the complainant and if at all, any such ground is to be considered, the petitioner can raise it during trial before the learned court below.

5. The contention of the learned counsel for the petitioner is that the complaint was beyond time but was saved on account of manipulation as has been alleged and if liberty is be granted to move an application before the learned court below directing the complainant, namely, opposite party No.2 to produce the AD, it would serve the purpose.

6. Considering the submission of the learned counsel for the petitioner, the Court instead of entering into the merits of the claim regarding the manipulation as to whether the complaint was filed on 15th November, 2018 or on 17th November, 2018, instant petition may be directed to be disposed of with liberty to the petitioner to move an application before the learned court below a direction to opposite party No.2 to submit the AD. In other words, the Court is of the view that if such a liberty is granted to the petitioner, the petition can be disposed of and as to the claim of petitioner on the maintainability of

the complaint on the ground of not being filed within statutory period but for the manipulation, it may be examined by the court below on receiving such evidence during trial.

7. Accordingly, it is ordered.

8. Consequently, the CRLMC stands disposed of with a liberty granted to the petitioner to move an application before the learned court below with a prayer to direct the complainant, namely, opposite party No.2 to submit the AD and then participate in the trial by raising such ground with regard to maintainability the complaint and if such an application is moved, the learned court below should consider and pass appropriate order thereon and after examining the evidence received as a whole to dispose of the complaint on merits and as per and in accordance with law.

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

(R.K. Pattanaik)
Judge