

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2805 of 2015

Chairman, even Hills Group of
Companies for Seven Hills Estate
Limited, Ganjam and another

....

Petitioners

Mr. Prasant Kishore Ray, Sr. Advocate

-Versus-

State of Orissa and another

....

Opposite Parties

Mr. T.K. Praharaj, SC, OP No.1

None for OP No.2

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
15.09.2022

Order No.

- 08.
1. Heard Mr. Ray, learned Senior Counsel for the petitioners and Mr. Praharaj, learned Standing Counsel for the State.
 2. Instant petition under Section 482 Cr.P.C. has been filed by the petitioners challenging the impugned order dated 18th May, 2015 passed by the learned S.D.J.M., Berhampur in ICC Case No.157 of 2007, wherein, NBWAs were issued against them on the grounds stated therein.
 3. Perused the impugned order dated 18th May, 2015 as at Annexure-1.
 4. Learned counsel for the petitioners submits that learned court below committed error by issuing NBWAs against the petitioners under the impugned dated 18th May, 2015 when the case was posted for judgment. It is further submitted that the petitioners

had moved an application for rejection of the complaint on certain ground but the same was rejected by the learned court below and thereafter on the very same day due to their absence in person, the order of NBWAs was issued and posted the matter to 26th June, 2015 for production which is unjust and illegal since because after disposal of the application, the learned court below should have fixed up a date for appearance to pronounce the judgment.

5. Mr. Praharaj, learned Standing Counsel for the State submits that the petitioner may be directed to surrender on a date fixed in order to enable the learned court below to pronounce the judgment which has been kept in a sealed cover at present.

6. On a perusal of the impugned order under Annexure-1, the Court finds that the petitioner had in fact filed an application before the court below claiming that the complaint was not maintainable on ground stated but then it was rejected on the ground that the complaint can only be dismissed in terms of Section 203 Cr.P.C. and as such, there is no provision to quash such proceeding. It also appears that on the very same date, i.e. 18th May, 2015, on the date of rejection of the application, the learned court below in absence of petitioners issued NBWAs and adjourned the case to 26th June, 2015 for delivery of judgment.

7. Mr. Ray, learned Senior Counsel for the petitioners submits that the decision of the learned court below is palpably wrong and unjustified and the contention was not appreciated in its proper perspective and rejected the application and thereafter, instead of adjourning the case to a future date for appearance of the petitioners, straightway issued NBWAs which is illegal and uncalled for. As it appears from the record, the trial is over and the proceeding is now pending for pronouncement of judgment awaiting production of the petitioners. In such view of the matter, the Court is of the considered view that as there is evidence already

closed, the question which was raised with regard to certain factual aspect must have been taken care of and dealt with by the learned court below, a decision which would ultimately be rendered in the judgment. Instead of considering the case on merits, the Court is of the view that the petitioners should rather surrender before the learned court below on a specific date to ensure pronouncement of the judgment at the earliest which would serve the purpose and meet the ends of justice. At this point, it is informed that the father of petitioner No.2 has already expired in the meantime which is taken on record. Accordingly, it is ordered.

8. The CRLMC stands disposed of with a direction to petitioner No.2, namely, Mr. M.S. Srinivas to surrender before the learned S.D.J.M., Berhampur on or before 15th October, 2022 in ICC Case No.157 of 2007 and in the event of their surrender, the court below shall release them on bail subject to conditions and fix up a date for the judgment to be pronounced without any further delay.

9. Issue urgent certified copy of this order on proper application.

(R.K. Pattanaik)
Judge