

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.4781 of 2011

Abhaya Kumar Jena

....

Petitioner

-versus-

State of Orissa & another

....

Opposite Parties

CORAM: JUSTICE S.PUJAHARI

ORDER

04.04.2022

Order
No.

- 07.
1. This matter is taken up through Hybrid mode.
 2. This application under Section 482 Cr.P.C. has been filed by the Petitioner for quashment of the order dated 15.01.2008 passed by the learned J.M.F.C., Ranpur in G.R. Case No.292 of 2006 taking cognizance under Sections 341/294/323/324/34 IPC and issuing N.B.W(A) against him.
 3. Learned counsel for the Petitioner submits that the Petitioner is a government official as such the FIR having been lodge by the informant, who is a habitual offender of forest produce, the court should not have taken cognizance against the Petitioner and issued N.B.W. issued against him, particularly when there is no sanction to proceed against the Petitioner.
 4. But, I am not inclined to accept the submission made by the learned counsel for the Petitioner in view of the law laid down

by the apex Court in the case of **Bhagwat Singh vrs. Commissioner of Police and another** reported in AIR 1985 SC 1285 and in this case also the Petitioner could not bring to the notice of the Court that the aforesaid offence was committed in due discharge of official duty. Therefore, I am not inclined to interfere with the impugned order.

5. Accordingly, this Criminal Misc. Case stands disposed of.

6. However, liberty is given to the Petitioner to raise all the contentions available to him at the time of framing of charge and in that event, the court before framing of charge shall take note of the contentions in the light of the provision of Sections 244 and 245, Cr.P.C without being influenced by the reluctance of this Court to interfere in the order of cognizance. Furthermore, if the Petitioner surrenders within six weeks hence and moves for bail in the aforesaid court, the court in seisin over the matter shall allow him to go on bail and recall the N.B.W.(A) pending.

7. Urgent certified copy of this order be granted on proper application.

8. Interim order passed earlier stands vacated. This order be communicated to the trial court immediately.

(S. Pujahari)
Judge

PKS