

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2118 of 2022

Sangram Keshari Sahoo

....

Petitioner

Mr. S.R. Das, Advocate

-Versus-

Rajendra Kumar Champatiray

....

Opposite Party

Mr. B.K. Ragada, Advocate for O.P.

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

31.10.2022

Order
No.
05.

1. Heard learned counsel for the petitioner and learned counsel for the opposite party.
2. In the instant case, the challenge is as to the impugned order under Annexure-3 whereby in ICC Case No.2385 of 2011 an application under Section 311 Cr.P.C. moved by the petitioner for cross-examination of the complainant, namely, opposite party No.2 was declined.
3. A copy of the complaint as at Annexure-1 is perused by the Court. As it appears, opposite party No.2 filed the said complaint against the petitioner under Section 138 NI Act after the cheque with an amount of Rs.10 lac was dishonored. It is further submitted that the petitioner could not cross-examine the opposite party and therefore, an application 311 Cr.P.C. was moved before the court below though it was filed at a belated stage when the case to be pending at the stage of argument. The learned counsel for the petitioner submits that he had made payment of Rs.3,29,000/- on different occasions and the statements from the bank were collected

and thereafter, since the opposite party was not cross-examined at all, such an application under Section 311 Cr.P.C. was filed, however, the learned court below did not appreciate the need of cross-examination of the complainant and rejected the same on the ground of delay and for having not availed number of opportunities provided to him earlier. It is claimed that if the petitioner is not allowed to cross-examine the opposite party, he would be immensely prejudiced as he is required to confront the latter with regard to the alleged payment of Rs.3,29,000/- which has been made prior to 2018. He further submitted that the complaint was filed in 2011 whereas the opposite party was examined and discharged in 2018 and although there is delay in applying for recall, an opportunity should have been provided since the complainant has not at all been cross-examined in the case. The learned counsel for the opposite party on the other hand submits that there is no wrong or illegality committed by the learned court below in passing the impugned order under Annexure-3 since because the petitioner did not avail the opportunities and that apart, applied for recall at the stage of argument.

4. The Court perused the impugned order under Annexure-3 and the ground upon which rejection application under Section 311 Cr.P.C. which is on account of not availing the opportunity to cross-examine the complainant and that apart, such a move was at the fag end.

5. Considering the submissions of learned counsel for the petitioner as well as opposite party, the Court is of the view that since the complainant was not cross-examined in the year 2018 and was discharged and considering claim that an amount of Rs.3.29 lac is claimed to have been paid to opposite party on different dates

referring to the bank statements, an opportunity should be provided to him to confront the same and for the said purpose, recall is necessary. Law is well settled that in order to do justice and allow a party to recall a witness for the purpose of re-examination or further cross-examination as the case may be should be permitted, inasmuch as, there is no bar as at any stage recall can be allowed by a court subject to the expediency. In the present case, since the claim is made about payment of Rs.3.29 lac as against a cheque amount of Rs.10 lac which has been dishonored, the Court is of the conclusion that in order to advance the cause of justice, the petitioner should be allowed to confront said fact to the opposite party and hence, recall of the latter for the purpose of his cross-examination is essential.

6. Accordingly, it is ordered.

7. In the result, CRLMC stands allowed. As a corollary, the impugned order under Annexure-3 in ICC Case No.2385 of 2011 is hereby set aside. Consequently, the petitioner is allowed to recall opposite party for his cross-examination subject to payment of cost as would be determined and directed by the learned J.M.F.C., Bhubaneswar who shall proceed to ensure and accomplish it on a single day without any adjournment.

8. An urgent certified copy of this order be granted as per rules.

(R.K. Pattanaik)
Judge

TUDU