

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2942 of 2016

Sri Apan Kumar Dey

.... Petitioner  
Mr. S.K. Tripathy, Advocate

-Versus-

State of Orissa and another

.... Opposite Parties  
Mr. S.S. Mohapatra, ASC

CORAM:  
MR. JUSTICE R.K. PATTANAİK

ORDER  
17.11.2022

Order No.

06.

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. A.D. of notice from opposite party No.2 received after valid service since 2016 but none has appeared for the opposite party No.2.
3. Learned counsel for the petitioner submits that the proceeding under section 138 of N.I. Act before the learned J.M.F.C., Jaleswar in ICC No.192 of 2007/Trl. No.891 of 2007, the signature on the alleged cheque was disputed therefore it was sent to the scientific examination and opinion from handwriting expert and thereafter report received by the leaned court, the same was not considered and taking in and taking out and finally the petitioner was alleged of the said offences. However, learned Sessions Judge, Balasore in its order dated 19<sup>th</sup> August, 2016 passed in Criminal Appeal No.22 of 2015 (Annexure-3) granted interim stay in favour of the petitioner holding that such a report shall be considered at the time of final adjudication of the appeal.

4. Learned counsel for the petitioner submits that since the report is under trial, the petition under Section 391 Cr.P.C., a plea was made that it has taken cognizance by the learned Sessions Judge for execution of the appeal.

5. Considering the above submission and since the appeal is pending before the court below, this Court is of the view that the purpose would be best served if a direction is issued for consideration of the application under Section 391 Cr.P.C. at the time of disposal of the appeal.

6. Accordingly it is ordered.

7. Consequently, the CRLMC stands disposed of with a direction to the learned Sessions Judge, Balasore to consider the additional evidence moved in term of Section 391 of Cr.P.C. and while disposing of Criminal Appeal No.22 of 2015, a copy of the order be handed over to learned court below for immediate compliance.

(R.K. Pattanaik)  
Judge

U.K.Sahoo