

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2305 of 2022

Shaji Sivadasan

....
Mr. S. Dwibedi, Advocate

Petitioner

-Versus-

State of Odisha and others

....
Mr. P. Tripathy, ASC

Opposite Parties

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

13.09.2022

Order
No.

01.

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. Instant petition under Section 482 Cr.P.C. filed by the petitioner assailing the observation and the findings of the learned Additional DCP-Cum-Executive Magistrate, Bhubaneswar passed in CMC No.566/22 in a proceeding under Section 144(2) of Cr.P.C. on the grounds stated therein.
3. The Court perused the impugned order dated 28th April, 2022 as at Annexure-2.
4. Learned counsel for the petitioner submits that not only the proceeding under Section 144(2) of Cr.P.C was dropped by opposite party No.3 but also an observation was made to the effect that the petitioner has perpetuated fraud upon the court and with such a conclusion, proceeded to revoke the preliminary order dated 9th April, 2022 and ultimately passed the impugned order which is not borne out of the record and the authority does not have the jurisdiction either to do so and in support of such contention, an order of the Supreme Court dated 26th August, 2022 in Special Leave to Appeal (Crl.) No.5061 of 2022 disposed of on 26th August,

2022 in the case of **Mohd. Shakir Vrs. State of Uttar Pradesh and Others** is referred to.

5. Learned counsel for the State on the other hand submits that since the petitioner was found to have suppressed material facts, therefore, opposite party No.3 had to make such an observation while dropping the proceeding initiated under Section 144(2) Cr.P.C. at his behest and therefore, impugned order under Annexure-2 is not to be interfered with.

6. The Court finds that Annexure-2 dated 28th April, 2022 is passed in a proceeding under Section 144 Cr.P.C. and being a final order is revisable. In other words, the Court is of the opinion that the petitioner should have challenged the impugned order passed by opposite party No.3 under Annexure-2 before the revisional court challenging the observation as well as findings in CMC No.566 of 2022.

7. Accordingly, it is ordered.

8. In the result, the CRLMC stands disposed of with a liberty granted to the petitioner to approach the revisional court against the impugned order i.e. Annexure-2 in CMC No.566/22 of the learned Additional DCP-Cum-Executive Magistrate, Bhubaneswar raising grounds including absence of material to sustain an observation of fraud so held by opposite party No.3 and if so advised, also on the merits of the proceeding which was dropped at the end.

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

(R.K. Pattanaik)
Judge