IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2832 of 2019

Girija Sankar Mishra	....	***Petitioner***
	-versus-	
Reetanjali Nayak	....	***Opposite Party***

CORAM: JUSTICE S. PUJAHARI

<u>ORDER</u>
08.02.2022

<u>Order No.</u>

07.

1. This matter is taken up through hybrid mode.

2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order dated 12th September, 2019 passed by the learned J.M.F.C., Bhubaneswar in 1.C.C. No.1636 of 2015 wherein petition under Section 311 of Cr.P.C. field by the Petitioner has been rejected.

3. Heard.

4. It appears that the Petitioner had made a prayer under Section 311 of Cr.P.C. for recall of P.W.1-Complainant in a proceeding under Section 138 of N.I. Act. After cross-examination, the Petitioner filed the petition that since the conducting advocate left out some questions with regard to capability of the Petitioner to lend the amount of Rs.1,20,00,000/- (Rupees one crore twenty lakhs) and, as such,

the petition was filed to recall the said witness to put him certain questions that is whether he was at all income tax assessee. But the court has refused the same vide the impugned order. As such, he has come to this Court to challenge the same in this Criminal Misc. Case. However, it is not disputed that the Petitioner had drawn the cheque. Furthermore, a petition was filed on 7th August, 2019 after cross-examination of the witness for recall and the same was allowed fixing the case on 9th August, 2019 for cross-examination. Due to the accommodation of the advocates on the said date, the case was posted to 16th August, 2019. The accused on that date remain absent, as such, the witness was returned declining his cross-examination. But, his lawyer on the same day filed another petition for recall. As in spite of the opportunity given in the aforesaid proceeding under Section 138 of N.I. Act, the witness was not cross-examined, the Court refused to allow such prayer and posted the case on 3rd October, 2019 for defence evidence.

5. Learned counsel for the Petitioner would submit that since the examination of the aforesaid witness is essential for just decision of the case, the trial court could not have refused to recall the witness. However, as it appears, the aforesaid is a proceeding under Section 138 of N.I. Act, which is required to be tried summarily and also expeditiously. In spite of opportunity given, the Petitioner has not availed the same on one pretext or other. It could not also be justified by the counsel that how the aforesaid question relating the complaint-drawee

whether a income tax assessee or not is essential for just decision of the case.

6. Therefore, in such circumstances, this Court is not inclined to interfere with the order of the trial court refusing to recall the P.W.1-Complainant for further cross-examination, as the same was nothing but to delay the matter, moreso when it is a proceeding under Section 138 of N.I. Act and pending since 2015.

7. Accordingly, the CRLMC stands dismissed.

(S. Pujahari)
Judge

DA