

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1499 of 2021

&

I.A. No.919 of 2022

Shri Vinod Kuamr

....

Petitioner

-versus-

State of Odisha (Vigilance)

....

Opposite Party

CORAM: JUSTICE S. PUJAHARI

Order

No.

01.

ORDER
02.08.2022

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 proceeding in T.R. No.1 of 2009 pending in the Court of Special Judge (Vigilance), Bhubaneswar.
3. Heard Mr. Devashis Panda, learned counsel appearing for the Petitioner and Mr. N. Moharana, learned Additional Standing Counsel appearing for the Vigilance Department.
4. The Petitioner has sought for quashment of the aforesaid criminal prosecution on the ground of delay in disposal of the case.
5. Though the case of the year 2005, but the case is at the stage of argument. Therefore, the quashment of the proceeding on the aforesaid ground at this stage is without any substance.

6. However, Mr. Panda, learned counsel appearing for the Petitioner submits that though the trial court had earlier allowed a prayer to call for certain documents, out of which, all except one were produced and marked as exhibits. The document, i.e. Annual Report of the ORHDC of the C.A.G. Audit for the financial year 2000-01 was not produced, but the court instead of insisting for producing the same in compliance to its order proceeding with the argument. The same shall cause serious prejudice to the Petitioner in his defence. Hence, the trial court be directed to take steps for compliance of its order passed earlier.

7. Mr. Moharana, learned Additional Standing Counsel appearing for the Vigilance Department submits that the same is different cause of action, as such, in a petition under Section 482 of Cr.P.C., the Petitioner is precluded for raising the same by filing a Misc. Case. If he is aggrieved by the same, he has to come to this Court by filing appropriate petition challenging the order passed.

8. Mr. Panda, learned counsel appearing for the Petitioner submits that during pendency of this petition, as such cause of action arose, he has filed a Misc. Case seeking the said relief.

9. Since the matter is of the year old one, this Court is not inclined to reject the prayer made in the aforesaid interlocutory application on the aforesaid technicalities. The prayer of the Petitioner is plain and simple inasmuch as he has prayed to call for the document that is not produced in spite of the direction of the trial court and exhibit the same in his defence before proceeding with the argument.

10. When the court had already pass an order directing the authority concerned to produce the documents, if those documents

were not produced, the court then has to ascertain the reasons for non-production of the same and also take coercive steps to implement its order. The court without doing the same, proceeded with the matter, even though the Petitioner re-agitated the same, the same was rejected on the ground that the same was to delay the matter and also on the prayer of the Petitioner, this Court has directed early disposal of the case.

11. No doubt, Petitioner had come for quashment of the order in a petition under Section 482 of Cr.P.C., i.e., CRLMC No.2991 of 2008, which was withdrawn with the observation that for quick disposal, but for that, the trial court without giving a chance to the defence to adduce evidence to rebut the prosecution evidence against him, could not have proceeded in the case for such observation of this Court, moreso the court has accepted such prayer to call for the documents, without ensuring its production by the prosecution as directed.

12. Hence, in this case, while dismissing the criminal misc. case as aforesaid for quashment, this Court direct that the trial court to take steps to cause production of documents which is not produced in spite of direction and if the same is not produced or not available, pass a reasoned order in the same, then proceeded with the argument.

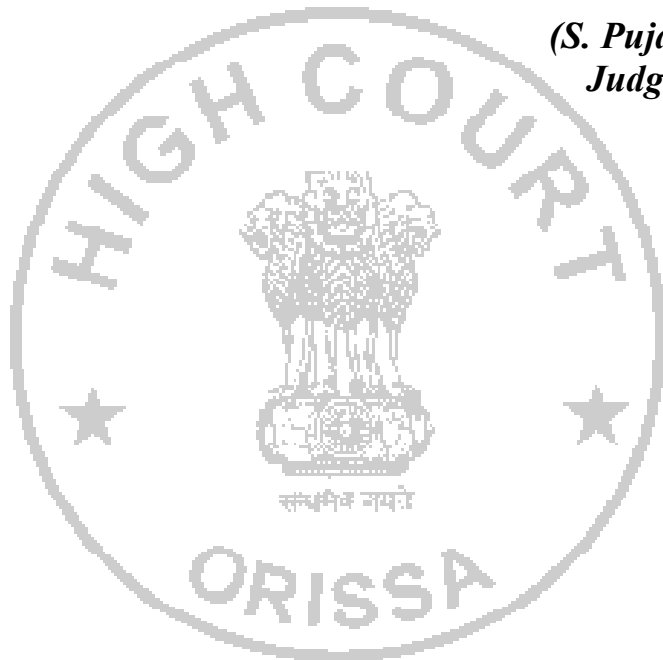
13. Needless to say that no further indulgence shall be given to the Petitioner to adduce any defence evidence after production of the said document, which are on production is going to be marked as exhibits as stated by the counsel for the parties. But, as it is stated that the argument is still continue, the court will not resume the argument till the aforesaid direction is complied with.

14. It is hope and trust that the aforesaid exercise must be concluded not later than 21st day of receipt of copy of this order.

15. With the aforesaid order, the Criminal Misc. Case as well as the I.A. stands disposed of.

16 A free copy of this order be given to Mr. N. Moharana, learned Additional Standing Counsel appearing for the Vigilance Department.

DA



(S. Pujahari)
Judge