

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2507 of 2022

Somanath Naik

....
Mr. P.K.Sahoo, Advocate

Petitioner

-Versus-

State of Odisha & Another

....
Mr. Rajesh Ku.Tripathy, ASC

Opposite Parties

CORAM:
JUSTICE R.K.PATTANAİK

Order No.

ORDER
01.11.2022

- 01.
1. Heard learned counsel for the petitioner and Mr. Tripathy, learned counsel for the State-opposite party No.1.
 2. Present petition under Section 482 of Cr.P.C. is filed by the petitioner challenging the impugned order dated 16th August, 2022 passed in I.C.C. Case No. 36 of 2021 by the court of learned SDJM, Kamakhya Nagar on the grounds stated therein.
 3. Learned counsel for the petitioner submits that the complaint has been filed by opposite party No.2 registered as I.C.C. No. 36 of 2021 for an offence under Section 138 of the N.I. Act, wherein, the impugned order under Annexure-4 was passed on a prayer for exemption in terms of Section 205 Cr.P.C.
 4. It is submitted by Mr. Sahoo, learned counsel for the petitioner that the petitioner is a poor man and serving as a Gram Rakhi and he is also having health issues and therefore, he applied for exemption under Section 205 Cr.P.C. but then, the learned court below did not consider the same and rejected it vide Annexure-4.

5. Mr. Tripathy, learned counsel for the State submits that the petitioner is having recourse to Section 317 Cr.P.C. which has also been observed in the impugned order i.e. Anneuxre-4.

6. In usual course an application for exemption under Section 205 Cr.P.C. cannot be allowed unless until a case is made out. In the present case, the petitioner alleged to have committed an offence under Section 138 of the N.I. Act and on certain grounds, he prayed for exemption but was not successful.

7. In course of hearing, learned counsel for the petitioner submits that liberty should be granted to the petitioner to file a better application with all grounds claiming exemption of Section 205 Cr.P.C. before the learned court below which would serve the purpose.

8. Considering the above limited prayer, CRLMC stands disposed of with a liberty to allow the petitioner to make an application under Section 205 Cr.P.C. afresh before the court of learned SDJM, Kamakhya Nagar in I.C.C. Case No. 36 of 2021, which on being so moved, the court shall consider it and pass appropriate order as per and in the light of settled position of law.

(R.K.Pattanaik)
Judge