

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2939 of 2016

Narendra Kumar Praharaj

....

Petitioner

Mr. Jaydeep Pal, Advocate

-versus-

State of Odisha and another

....

Opposite Parties

Mr. Debakanta Mohanty, Additional Government Advocate

**CORAM:
THE CHIEF JUSTICE**

**ORDER
18.11.2022**

Order No.

05. 1. The challenge in the present petition is to an order dated 3rd June, 2015 whereby the Sub-Divisional Judicial Magistrate (SDJM), Bhubaneswar has, in ICC No.1576 of 2015 subsequently registered as Badagada P.S. Case No.138 of 2015 corresponding to C.T. No.2621 of 2015, passed an order referring the complaint filed by the Opposite Party No.2 to the I.I.C., Badagada Police Station for registration and investigation of the case under Section 156(3) Cr.P.C.
2. The challenge to the impugned order is on the basis that the SDJM failed to comply with the mandatory requirement of Section 200(1) Cr.P.C., which required him to examine the complainant on oath apart from witness if any and reduce the substance of such examination to writing which should then be signed by the complainant. The circumstances set out in the proviso to Section 200, which dispense with the examination of the complainant, do not apply in the present case. It is only thereafter the Magistrate

under Section 202 Cr.P.C. has to take a call whether to refer the complaint for further investigation by the Police under Section 156(3) Cr.P.C.

3. It may be noted here that despite service upon Opposite Party No.2 and earlier a learned counsel representing him, today none appears for Opposite Party No.2.

4. Having heard learned counsel for the Petitioner and learned Additional Government Advocate, the Court is of the view that the impugned order is unsustainable in law on account of the failure by the SDJM to comply with the mandatory requirement of Section 200 Cr.P.C.

5. Consequently, the impugned order is set aside and ICC No.1576 of 2015 is remanded to the file of S.D.J.M., Bhubaneswar to be proceed with from the stage for examination of the complainant by the Magistrate on oath in accordance with Section 200 Cr.P.C. The matter will now be listed before the S.D.J.M., Bhubaneswar for directions on 12th December, 2022. A copy of this order be sent to the concerned Court forthwith.

6. The petition is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

M. Panda