

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMA No. 256 of 2022

Sri Trilochan Mallick

....

Petitioner

Mr. D.P. Sarangi, Advocate

-Versus-

Sri Suraj Kumar Nayak

....

Opposite Party

None

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

22.09.2022

Order No.

01.

1. This is an application for restoration of CRLMC No.2081 of 2017 which has been dismissed for non-prosecution by the Court's order dated 8th September, 2022.
2. For the reason stated therein, the application for restoration is allowed. CRLMC No.2081 of 2017 stands restored to file.
3. CRLMA is disposed of accordingly.

(R.K. Pattanaik)
Judge

CRLMC No.2081 of 2017

02.

1. Heard learned counsel for the petitioner and none appears for the opposite party when the matter is called.
2. Instant petition under Section 482 Cr.P.C. is filed by the petitioner praying for quashing of the order dated 13th April, 2017 passed in ICC Case No.2 of 2017 passed by the learned S.D.J.M., Nabarangpur on the grounds inter alia that the same is not tenable in law and deserves to be set aside in the interest of justice.

3. Learned counsel for the petitioner submits that the petitioner at the relevant point of time was a Deputy Manager of the State Bank of India, Nabarangpur Branch and in such capacity dealt with the KCC Loan account of the complainant's father, namely, Sri Ramesh Chandra Nayak, who had availed an agricultural/KCC Loan for an amount of Rs.46,000/- from the Bank on 3rd July, 2012 and as per the terms of sanction, the loan was to be paid back with interest within a period as agreed upon between the parties and petitioner being duly authorized by the Chief Manager, State Bank of India, Nabarangpur Branch debited the amount of Rs.46,000/- towards KCC Loan. It is submitted by the learned counsel for the petitioner that the entire amount towards due was accordingly adjusted and realized and as such no illegality has been committed by the petitioner but then, the petitioner who happens to be the son of the loanee managed to get a legal notice dated 31st January, 2017 issued to him through the Secretary of District Bar Association, Nabarangpur allegedly for an incident dated 19th January, 2017. It is claimed that the petitioner has been accused of using derogatory language during the incident. It is contended by learned counsel for the petitioner that during and in course and while discharging official duty, the petitioner did recover the outstanding dues amounting to Rs.78,188/- which was again on the strength of authorization issued by the complainant's father and the allegation made in the complaint are outrightly false.

4. None appears on behalf of the opposite party despite a valid service of notice as AD returned back with such an endorsement.

5. The learned counsel for the petitioner referring to Annexure-1 submits that the Bank was permitted by the complainant's father under an authorization dated 3rd July, 2012 to realize and recover the amount towards KCC loan from the savings account maintained by him with the concerned branch and ultimately after recovery of the dues, the loan account was closed.

6. As it appears, the complainant filed a complaint in ICC No.2 of 2017 whereupon the court below took cognizance of the offences by order dated 13th April, 2017 for the offences under Sections 294 and 506 IPC. Even though the complaint is filed with certain overt acts alleged against the petitioner, who was the Deputy Manager of the concerned Bank at the relevant point of time but then it was at a time while he was discharging duty for ensuring recovery of loan dues which was to be payable and outstanding and under such circumstances, the court below was required to conduct a detailed enquiry which it did not exert. Since the petitioner was a bank officer, who was duty bound to recover the bank dues and he did whatever had to be done in order to ensure such recovery of the entire amount, in such a situation, the learned court below should have had an enquiry of the nature so as to unearth the truth vis-à-vis the alleged incident which it failed to do.

7. Having considered the facts and circumstances of the case, the Court is of the view that the order of cognizance under Annexure-6 dated 13th April, 2017 passed in ICC No.2 of 2017 by the learned S.D.J.M., Nabarangpur in absence of a proper and detailed enquiry since not sustainable is liable to be set aside and accordingly, it is ordered.

8. In the result, the CRLMC stands allowed. As a necessary corollary, the order of cognizance under Annexure-6 series and also the criminal proceeding in ICC No.2 of 2017 are hereby quashed.

9. Issue urgent certified copy as per rules.

(R.K. Pattanaik)
Judge