

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMC No.1978 of 2021

Nalita @ Lalita Mohan Gar naik @
Lalita Mohan Gadanayak *Petitioner*
Mr. Sudheer Kumar Sahoo, Advocate

Versus

State of Odisha and another *Opp. Parties*
Mr.P.K.Mohanty, ASC
(for O.P.No.1)

CORAM:
JUSTICE SAVITRI RATHO

ORDER
03.03.2022

Order No.

08.

This matter is taken up through hybrid mode.

Heard Mr.Sudheer Kumar Sahoo, learned counsel for the petitioner and Mr. P.K.Mohanty, learned Addl. Standing Counsel. Copy of the CRLMC has been sent to the opp. party No.2 through the local police, but none appears for opp. party No.2 when the matter is called.

This application under Section 482 Cr.P.C. has been filed challenging the order dated 24.10.2016 passed by the learned S.D.J.M., Hindol in C.T. Case No.09 of 2017 corresponding to G.R. Case No.383 of 2014 arising out of Kantabania P.S. Case No.135 of 2014 issuing N.B.W. of arrest against the petitioner.

Learned counsel for the petitioner submits that the petitioner has received notice under Section 41-A of Cr.P.C. and was released on bail on 03.01.2015. Thereafter without proper service of summons, N.B.W. of arrest has been issued against him.

However, from a perusal of the copy of the charge sheet filed by learned counsel for the petitioner by way of a memo, it is

apparent that the petitioner has been served notice under Section 41-A, but he has not been arrested.

For better appreciation, Section 41-A Cr.P.C. reads as follows:-

“41-A. Notice of appearance before police officer.- (1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

[[4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.]]”

It is therefore apparent that the averment of the petitioner that he was released on bail under Section 41-A Cr.P.C. is incorrect as he has not been arrested and after filing of charge sheet, summon has been issued to him.

Learned counsel for the petitioner submits that summon has not been served on him personally but has been erroneously held to be

sufficient. As learned counsel for the petitioner has not filed the entire order sheet, it is not possible to ascertain the reason given for sufficiency of summon. However, in order to secure the presence of the petitioner in the trial, it is directed that if the petitioner surrenders before the learned court below within a period of four weeks from today and moves an application for bail, his application shall be considered keeping in view the fact that notice under Section 41-A of Cr.P.C. during investigation and thereafter summons had initially been sent to him.

With the aforesaid observation, the CRLMC is disposed of.
Urgent certified copy of this order be granted as per rules.

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(Savitri Ratho)
Judge

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