

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3255 of 2022

Sriprakash Mohanty

....

Petitioner

Mr. B.R. Mohanty, Advocate

-Versus-

State of Odisha and Others

....

Opposite Party

Mr. T.K. Praharaj, SC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

21.11.2022

**Order
No.**

01.

1. Heard learned counsel for the petitioner and learned counsel for the State-opposite party No.1.

2. Learned counsel for the petitioner submits that the father of the petitioner was the complainant and he had filed 1CC Case No.468 of 2013 under Section 138 NI Act and sometime thereafter, he expired consequent upon which no step could be taken in the proceeding pending before the learned S.D.J.M.(S), Cuttack and finally the impugned order dated 22nd March, 2022 was passed dismissing the complaint on account of default.

3. Learned counsel for the petitioner submits that the legal representatives to be substituted in place of the complainant, who died in the year 2015 but before it could be accomplished, the proceeding in 1CC Case No.468 of 2013 was brought to an end vide the impugned order dated 22nd March, 2022 which is required to be

set aside in the interest of justice morefully considering the nature of litigation which is with regard to cheque bounce and initiation of a criminal action under Section 138 NI Act.

4. The complaint was filed in the year 2013 and as per Annexure-2, a copy of the death certificate, the complainant died in the year 2015, the fact which could not be brought to the notice of the learned court below. In fact, summons was issued to the complainant in the year 2021 but due to no response, the learned S.D.J.M.(S), Cuttack passed the impugned order dated 22nd March, 2022 and dismissed the complaint in terms of Section 256 Cr.P.C.

5. Mr. Praharaj, learned counsel for the State opposite party No.1 refers to the impugned order dated 22nd March, 2022 in order to apprise the court as to the circumstances leading to the dismissal of the complaint as it was lingering since 2013.

6. On account of death or default of the complainant, any dismissal of a complaint in terms of Section 256 Cr.P.C. is appealable in nature as per Section 378(4) Cr.P.C. subject to a leave obtained for the said purpose. Learned counsel for the petitioner submits that if such leave is granted to the petitioner, who is the LR of the complainant, necessary direction may be issued in that regard.

7. Having regard to the fact that there has been a delay for about 7 to 8 years since the time the complaint was filed but considering the nature of litigation between the parties as it is related to cheque bounce for amount of Rs.19 lac, the Court is of the view that the petitioner should be granted the liberty to filing an appeal in terms of Section 378 Cr.P.C. It is made clear that leave to

entertain appeal shall be governed by Section 378 (4) of the Cr.P.C. which shall be considered on its own merit and in accordance with law.

8. Consequently, CRLMC stands disposed of.
9. Urgent certified copy of this order be granted as per rules.

(R.K. Pattanaik)
Judge



TUDU