

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2901 of 2021

Santosh Kumar Pradhan

....

Petitioner

*Mr. S.R. Das,
Advocate*

-Versus -

Santan Behera

....

Opposite Party

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

25.01.2022

Order No.

2.

1. This matter is taken up through virtual mode.
2. The petitioner in the present application filed under Section 482 of Cr.P.C. seeks to challenge order dated 06.02.2021 passed by learned S.D.J.M., Udala in 1CC Case No.87 of 2017 whereby the application filed by him under Section 311 of Cr.P.C. was rejected.
3. The brief facts, relevant only for deciding the present case are that, the petitioner is the accused in the aforementioned case in which the opposite party is the complainant. The said case has been filed under Section 138 of the NI Act for dishonor of a cheque amounting to Rs.3 lakhs allegedly given by the petitioner to the complainant towards re-payment of his dues. After closure of the evidence from the side of the complainant when the matter was posted for recording of the statement of the accused under Section 313 of Cr.P.C., the petitioner accused filed a petition under Section 311 of Cr.P.C. with prayer to summon the Branch Manager, Bank of India, Udala Branch to adduce evidence in the case.

Be it noted here that the said Branch Manager has been cited as a witness by the complainant in his complaint petition, but the complainant chose not to examine him as a witness from his side. Learned Court below held that the accused can always examine the Branch Manager as a witness at the time of defence evidence and hence, cannot invoke the provisions under Section 311 of Cr.P.C. at the stage of recording of the statement of the accused under Section 313 of Cr.P.C.

3. Mr. S.R. Das, learned counsel for the petitioner submits that the above reasoning of the court below is contrary to law inasmuch as it is well settled that the power under Section 311 of Cr.P.C. can be exercised at any stage of the proceeding.

4. A perusal of the impugned order reveals that the case was posted for recording of the statement of the accused since 19.07.2018 and the matter is being adjourned mainly at the instance of the accused himself. The petition under Section 311 Cr.P.C. appears to have been filed on 27.10.2021. It goes without saying that the petition was filed belatedly. Be that as it may, fact remains that the complainant, for reasons best known to him, did not examine the Branch Manager of the concerned Bank despite citing him as a witness from his side. Nevertheless, it is still open to the accused to examine him at the time of defence evidence. Therefore, without entering into the controversy as regards the observation made by learned court below with regard to the purported maintainability of the petition under Section 311 of Cr.P.C. at the stage of recording of the statement under Section 313 of Cr.P.C., the CRLMC is

disposed of by granting liberty to the accused to file appropriate application at the stage of defence evidence to examine the concerned witness, if he so desires. If such application is filed, the same shall be considered by the Court below having regard to the facts and circumstances of the case as also the provision under Section 311 of Cr. P.C.

6. Since the case is of the year 2017, learned court below shall do well to dispose of the same as expeditiously as possible, preferably within a period of four months from the date production of certified copy of this order.

7. The CRLMC is accordingly disposed of.

8. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020, modified by Notice No.4798, dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos. 514 and 515 dated 7th January, 2022.

(Sashikanta Mishra)
Judge