

(2001) 03 OHC CK 0052

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 941 of 2001

Rameswar Pradhan

APPELLANT

Vs

Surendra Naik and others

RESPONDENT

Date of Decision : 29-03-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2001) 92 CLT 432 : (2001) 21 OCR 13 : (2001) 1 OLR 655 : (2002) 1 RCR(Criminal) 226

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Heard.

2. In this application u/s 482, Cr. P. C. petitioner ventilates his grievance relating to -the disposal of Criminal Revision No. 29 of 2000 by learned Additional Sessions Judge, Sonepur without hearing the parties. Learned counsel for the petitioner states that because of the Lawyers" agitation, the advocate appearing for the petitioner could not appear in the court of Additional Sessions Judge, Sonepur on 22-1-2001 hence that Court "dismissed the revision being not moved." He thus prays that the lower revisional court be directed to hear .and dispose of the revision in accordance with law.

3. Notice was issued to both the opposite party members indicating therein that this application u/s 432, Cr.P.C. may be disposed of at the stage of admission. Such notice on both the opposite party, as repotted by the registry was served personally. Though the opposite party No. 1 has entered appearance and participates in the hearing but the opposite party No. 2 has neither appeared nor taken any steps. Learned Counsel for the opposite party No. 1 advances argument defending the impugned order and opposing to the prayer of the petitioner,

4. After hearing the parties and perusal of the certified copy of the relevant order-sheets in the said Criminal Revision, this Court finds that on 14-11-2000 the revision application was filed by the petitioner on 15-11-2000 the revision was admitted and notice was issued and on 22-1-2001 the revision was dismissed for default of the petitioner. The aforesaid fact situation thus goes to indicate that the revision was dismissed for default after it was admitted for hearing. Learned Additional Sessions Judge being a senior officer in the lower judiciary is expected to remain alive to the legal provision that once a revision is admitted for consideration, it cannot be dismissed for default. If the parties do not appear to participate, then it is the duty of the revisional court to peruse the record, examine the points canvassed in the revision application, analyse the fact and law and the legal lacuna, if any, in the impugned order and to dispose of the revision by a speaking order. In this case, learned Additional Sessions Judge having failed to do so this Court finds that the impugned order of dismissal due to default of the petitioner is non sustainable in the eye of law. Thus, the order dated 22-1-2001 in the said revision is set aside and learned Additional Sessions Judge is directed to hear and dispose of the revision application in accordance with law.

5. In view of the above order since the opposite party members in that revision are entitled to notice, therefore, petitioner undertakes to bear the cost of that notice. Therefore, it is directed that petitioner shall appear before the learned Additional Sessions Judge with a certified copy of this order, within a period of 15 days hence and shall file the requisites in both the ways for issue of notice to the opposite party member within the time that will be permitted by him by the learned Additional Sessions Judge. If the petitioner shall fail to comply with the aforesaid direction, then, it is open to the learned Additional Sessions Judge to peruse the record and dispose of the criminal revision in accordance with law.

The Criminal Misc. case is accordingly allowed. Intimate the lower court.

6. Criminal Misc. Case allowed.