

(2005) 01 OHC CK 0005
In the Orissa High Court
Case No : Criminal M.A. No. 10 of 2002

Smt. Basantirani Nayak

APPELLANT

Vs

Biranchi Narayan Prasad Nayak and Others

RESPONDENT

Date of Decision : 31-01-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438, 439(2)

Citation : (2006) CLT 1 (Suppl CrI)

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.S. Naidu, J.—Heard.

This petition has been filed u/s 439(2) of the Code of Criminal Procedure, inter alia, submitting that certain vital facts were not brought to the notice of this Court while the petition for bail was moved. According to Mr. Pradhan, Learned Counsel for the Petitioner, CrI. Misc. No. 5650 of 2002 was filed by the opposite parties u/s 438 of the Code of Criminal Procedure suppressing the fact that two other similar petitions being CrI. Misc. Case Nos. 8092/2001 and 6433/2001 were filed and were dismissed by this Court. Mr. Pradhan, forcefully submits that as this fact was not brought to the notice of this Court, by order dated 19.7.2002 the accused persons were directed to be released on bail if they surrender before the Court below. It is prayed to cancel the bail order. In support of his submission, the decision in the case of Vijay Singh v. State of Rajasthan reported in 1990 (2) Cri 52 was relied upon.

2. Learned Counsel for the opposite parties, at the other hand, submits that out of the earlier two CrI. Misc. Cases, one was permitted to be withdrawn and in the other this Court directed the opposite parties to surrender before the Court below and move for bail. But then this facts could not be brought to the notice of the Court inadvertently, as the counsel was not well and was sick at the relevant

time. He also humbly submits that such mistake shall not be committed in future. Considering the said submissions made, this Court directs cancellation of the order admitting the opposite parties on bail vide order dated 19.7.2002 and direct the Learned J.M.F.C., Banpur to take appropriate steps in G.R. Case No. 126/2001.

Application allowed.