

(2020) 05 OHC CK 0008

In the Orissa High Court

Case No : Criminal Miscellaneous case No. 3471 Of 2019

Suman Chattopadhyay

APPELLANT

Vs

Republic Of India

RESPONDENT

Date of Decision : 14-05-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 305, 305(2), 305(6)

Indian Penal Code, 1860 — Section 120B, 409, 420

Prize Chits And Money Circulation Schemes (Banning) Act, 1978 — Section 4, 5, 6

Citation : (2020) 05 OHC CK 0008

Hon'ble Judges : S.Pujahari, J

Bench : Single Bench

Advocate : Devashis Panda, D.Das, G.K.Dash, S.Pandad.Das, G.K.Dash,
S.Panda, A.K.Bose

Final Decision : Disposed Of

Judgement

1. This is an application filed under Section 482 of Cr.P.C. seeking for quashment of the order dated 21.11.2019 passed by the learned Special C.J.M. (C.B.I), Bhubaneswar in S.P.E. Case No.40 of 2014 corresponding to CBI/EO-IV/Kolkata Case No.RC 45(S) of 2014, and the consequential proceedings of the said case.

2. As it appears, the petitioner on being arrested by the C.B.I. in connection with the case referred to above, is in judicial custody as a co-accused since 21.12.2018. The C.B.I. has submitted supplementary charge-sheet in the said case on 17.04.2019 against the accused-petitioner as well as the company, namely, M/s. Disha Productions & Media Pvt. Ltd. (for short "DPMPL") showing the said company to have been represented by the present petitioner, for the offences under Sections 120-B, 420 and 409 of I.P.C. and under Sections 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (for short "PCMCS(B) Act, 1978"). According to the petitioner, he having already sold his share and interest in DPMPL to Chakra Group of Companies pursuant to an agreement dated 14.01.2013 is neither authorized nor competent to represent

DPMPL in this case. On the said ground the petitioner moved an application before the Court below seeking for issuance of summons to the company, namely, DPMPL afresh to enable the said accused-company to appoint its own representative in view of Section 305(2) of Cr.P.C. for the purpose of the case. The said petition having been rejected by the learned Court below vide the impugned order, the petitioner has approached this Court.

3. I have heard Mr. Devashis Panda, learned counsel appearing for the petitioner and Mr. A.K. Bose, learned Assistant Solicitor General of India appearing for the opposite party-Republic of India, and perused the impugned order and other relevant papers on record.

4. According to the prosecution, during the relevant period of time, i.e., the time when the alleged offences were committed, the accused- petitioner was in the management and control of the company, namely, the DPMPL. There is, however, no dispute on record that the petitioner resigned from Directorship of the said company on 14.03.2013. To put in other words, by the date of submission of supplementary charge-sheet by C.B.I. against DPMPL, the petitioner was no more associated with the Company in any manner. In that view of the admitted facts, the petitioner cannot be summoned or directed to represent the accused-company, namely, DPMPL, merely for the reason that in the charge-sheet he has been described as the representative of the company during the relevant period of time. Since in the given circumstances, Section 305 of Cr.P.C. comes into play, the learned Court below ought to have considered the petition moved by the accused-petitioner in right perspective. The impugned order rejecting the petition being not maintainable speaks of non-application of judicial mind by the learned Special C.J.M. (C.B.I.), Bhubaneswar.

5. It is the submission of the learned Assistant Solicitor General of India appearing for the Republic of India that this Court may pass appropriate order in view of sub-section (6) of Section 305 of Cr.P.C. But, the said sub-section cannot be brought into play inasmuch as none has yet appeared to represent the company and hence no question has arisen as to competence or authority of any such representative. It is the learned Court below who is required to issue fresh summons to the accused- company - DPMPL with a direction for its appearance in the case through a representative to be appointed by the company in view of sub-section (2) of Section 305 of Cr.P.C. for the purpose of the trial of the case. The summons to be issued may be addressed to the Managing Director of the said Company. The petitioner who has been charge- sheeted as a co-accused in view of Section 6 of the PCMCS(B) Act, 1978 for the reason that he was in the management and control of business affairs of the said company at the time the alleged offences were committed, shall not be insisted upon to represent the company.

6. In the result, the impugned order is quashed and this CRLMC is disposed of with the direction issued above.