

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2263 of 2013

Balaji Metallica Private Limited and others Petitioners

Mr. B.B. Routray, Advocate

-Versus-

M/s. Annapurna Mineral Opposite Party

Mr. S. Udgata, Advocate for O.P.

CORAM:
MR. JUSTICE R.K. PATTANAIK

ORDER
15.07.2022

Order
No.

04. 1. Heard learned counsel for the petitioners and learned counsel for the opposite party.
2. Application under Section 482 Cr.P.C is filed by the petitioners assailing the proceeding pending in the court of learned J.M.F.C. (P), Rourkela in I.C.C. Case No.347 of 2012 on the ground stated therein. In fact, as revealed from the record, the learned court below has taken cognizance of the offence under Section 138 of N.I. Act by an order dated 31.8.2012 which is presently under challenge on the ground that no enquiry was held in terms of Section 202 Cr.P.C. and therefore, it is bad in law and in support of such a contention, the learned counsel appearing for the petitioners relies upon a decision of this Court in **Susanta Kumar Moharana Vrs. Ramesh Kumar Bhatta** reported in 2005 (Supp.) OLR 188.
3. The sole contention of learned counsel for the petitioners is that after complaint was filed, initial statement of the complainant was recorded, however, the court below did not hold any enquiry

under Section 202 Cr.P.C. and straightaway proceeded to issue summons. In other words, the submission is that an enquiry was necessarily required to be undertaken by the learned court below under the above provision, in absence of which, the proceeding is not sustainable and therefore, it has to be quashed in exercise of the inherent jurisdiction of the court.

4. The Court perused decision in **Susanta Kumar Moharana** (supra), wherein, after complaint and on recording of the initial statement of the complainant, the learned Magistrate proceeded with the complaint and ultimately took cognizance of the offence under Section 138 of the NI Act and then issued process to the accused under Section 204 Cr.P.C. However, it is no authority to say that a Magistrate must necessarily hold an enquiry under Section 202 Cr.P.C. before issuing summons under Section 204 Cr.P.C. and after taking cognizance of the offence which is preceded by the initial statement of the complainant recorded under Section 200 Cr.P.C. The Court finds that the contention of learned counsel for the petitioners to the effect that enquiry under Section 202 Cr.P.C is mandatory is not tenable. In fact, a Magistrate after receiving complaint and recording the initial statement of the complainant under Section 200 Cr.P.C. if is of the subjective satisfaction that a prima facie case is made out, instead of holding enquiry under Section 202 Cr.P.C. can proceed issuing notice under Section 204 Cr.P.C. after taking cognizance of the offence which appears to have done in the present case by the learned court below. No material is otherwise shown regarding absence of a case on facts alleged in the complaint and evidence received during enquiry. The Court therefore does not find any merit in the contention and in so far as the decision in **Susanta Kumar Moharana** (supra) is concerned, it

does not apply to the present case rather runs counter to the submission so made by the learned counsel appearing for the petitioners.

5. In the result, the CRLMC stands dismissed. Consequently, the interim order dated 13th 09.2013 passed in M.C. No.1529 of 2013 is hereby vacated.

(R.K. Pattanaik)
Judge



TUDU