

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2571 of 2013

<i>Jaladhar Sahu</i>		<i>Petitioner</i>
<i>versus-</i>		
<i>Branch Manager, Orissa State Co-operative Bank Ltd., Angul Branch, Angul</i>		<i>Opposite Party</i>

CORAM: JUSTICE S. PUJAHARI

Order
No.

ORDER
04.07.2022

09. 1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order dated 9th November, 2009 passed by the learned S.D.J.M., Angul in Criminal Trial No.2255 of 2009/1.C.C. No.268 of 2009 wherein cognizance of the offence under Section 138 of N.I. Act has been taken and issuing process against him.
3. Heard the learned counsel for the Petitioner. No one appears on behalf of the Opposite Party.
4. It appears that a cheque was drawn by the Petitioner in favour of the Payee (Opposite Party-Bank) and when presented by the Payee, was dishonored. Then the Payee gave the

statutory notice on the same on 17th June, 2009 to make payment. Neither any response was received pursuant to such notice from the Petitioner nor the notice was returned from the postal authority. In view of the presumption under the General Clauses Act that on expiry of one month from the date of giving of the such notice on the address of the Petitioner, the notice is deemed to have served. As such, fifteen days thereafter when the payment was not made by the Petitioner, a complaint to proceed under Section 138 of N.I. Act for such dishonored of the cheque was filed against the Petitioner.

5. According to the learned counsel for the Petitioner that Opposite Party-Complainant having not been issued with any notice as required under Section 138(b) of N.I. Act before initiation of the criminal prosecution asking payment of the amount of the offending cheque within fifteen days of receipt of such intimation of dishonor, but the criminal prosecution was launched, the same is vitiated and the complaint is liable to be quashed on that score alone.

6. However, from the fact narrated in the complaint petition, it appears that such a notice was given to the Petitioner for dishonored the cheque, since notice neither returned unserved nor the Petitioner responded to serve the notice. In such premises, as it was properly addressed the Complainant in view of Section 27 of the General Clauses Act with regard to presumption of service of notice through post, the computed period of service of the notice within one month. After fifteen days thereof when no payment was received in pursuant to such notice from the Petitioner, the Complainant-Bank lodged the complaint within the time stipulated. Therefore, the contention that is advanced challenging the order of cognizance that there was no cause of action, appears to be misconceived and without any substance.

7. Accordingly, the Criminal Misc. Case being devoid of merit stands dismissed.

(S. Pujahari)
Judge