

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3904 of 2011

Md. Abdul Hamed.

....

Petitioner

-versus-

Prasaanta Singh.

....

Opposite Party

CORAM: JUSTICE S.PUJAHARI

ORDER

21.07.2022

Order No.

07.

1. This matter is taken up through Hybrid mode.
2. The petitioner in this application under Section 482 of the Code of Criminal Procedure (for short “Cr.P.C.”) has prayed for quashing of the order of cognizance dated 21.12.2010 passed by the learned S.D.J.M., Panposh in I.C.C. No.404 of 2010 taking cognizance of the offence under Section 138 of the N.I. Act against him.
3. Heard the learned counsel for the petitioner and the learned counsel for the opposite party.
4. Learned counsel for the petitioner submits that since the offending cheque was not drawn by the petitioner for due discharge of any debt or liability, the complaint filed against

him under Section 138 of the N.I. Act is without any substance and, as such, the Court could not have taken cognizance of the same.

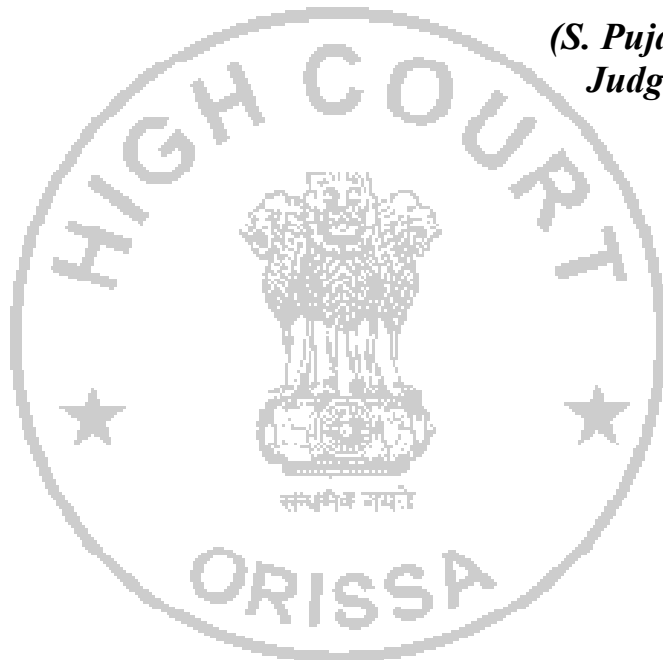
5. However, under Section 139 of the N.I. Act a presumption though rebuttable being there in favour of the holder of the cheque that he received the cheque regarded to under Section 138 of the N.I. Act for discharge of debt or liability and the opposite party-complainant having pleaded and produced materials for taking cognizance of the offence under Section 138 of the N.I. Act against the petitioner, such contention of the petitioner challenging the impugned order of cognizance appears to this Court to be without any substance, more so considering the fact that the Court at the stage of taking cognizance is now required to go into the uncontroverted allegations whether make out an offence for which cognizance has been taken and whether sufficient materials are there to proceed against the accused indicted thereon and admittedly, from the aforesaid facts, the case is made out to indict the petitioner in a case under Section 138 of the N.I. Act.

6. Accordingly, this Court is of the view that no case having been made out for quashment of the impugned order of cognizance, this CRLMC filed is devoid of merit and, as such, stands dismissed. Interim order dated 05.01.2012 passed by this Court stands vacated.

7. However, liberty is given to the petitioner to raise the aforesaid defence plea and any other plea available to him during the hearing of the case before the Court below and in that event, the Court concerned shall address the same in proper perspective vis-à-vis the evidence on record.

8. A copy of this order be communicated to the Court below forthwith.

MRS



(S. Pujahari)
Judge