IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.4546 of 2014

Asis Ranjan Mohanty .... ***Petitioner***

versus-

Akshaya Kumar Swain .... ***Opposite Party***

CORAM: JUSTICE S. PUJAHARI

ORDER
01.08.2022

Order No.

04. 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 4th March, 2014 passed by the learned S.D.J.M., Jagatsinghpur in I.C.C. No.28 of 2014, taking cognizance of the offence under Section 138 of N.I. Act.

3. Heard the learned counsel for the Petitioner. No one appears on behalf of the Opposite Party-Complainant in spite of sufficiency of notice.

4. Learned counsel for the Petitioner submits that in this case statutory notice after dishonored of the cheque having not been given within the time limit under Section 138 of the Negotiable Instruments Act, but much after the date prescribed, the court could not have been taken cognizance as the proceeding is vitiated for non-compliance of the mandate in this regard.

5. The complaint petition disclosing that the offending cheque was presented in the Bank on 14th September, 2013. The Opposite Party-Complainant then received intimation regarding dishonored of the cheque on 16th September, 2013. Though thereafter he was to give

statutory notice to the Petitioner within the time stipulated, but gave the notice more than one month after, i.e., 23rd October, 2013. The Petitioner appears to have not made any payment of the dishonored cheque within fifteen days thereof, the complaint was filed. However, prima facie on perusal of the complaint as well as initial statement, it appears that the Opposite Party-Complainant though duty bound to give statutory notice within thirty days on receipt of the intimation, he did not give such notice with the period, as required under Section 138(b) of the N.I. Act. But gave notice thereof after the prescribed period. No criminal liability appears to have there in this case for non-compliance of the mandatory provision of Section 138 of N.I. Act.

6. I would, therefore, allow this Criminal Misc. Case and quash the impugned order of cognizance as well as the entire criminal prosecution launched against the Petitioner vide I.C.C. No.28 of 2014 on the file of the learned S.D.J.M., Jagatsinghpur. The court concerned shall do well to comply with this order on production of the certified copy of this order.

7. Urgent certified copy of this order be granted on proper application.

(S. Pujahari)
Judge

DA