

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.888 of 2012

Ganeswar Naik

....
Petitioner
Ms. Sarada Dash, Advocate

-Versus-

State of Orissa and another

....
Opposite Parties
Mr. P.K. Mohanty, ASC
Mr. P.S. Das, Advocate

CORAM:
JUSTICE R.K. PATTANAIK

DATE OF JUDGMENT:04.07.2022

1. Instant petition under Section 482 Cr.P.C. is filed by the petitioner challenging the order of cognizance dated 30th November, 2011 passed in ICC Case No.140 of 2011 by the learned S.D.J.M. Keonjhar on the grounds *inter alia* that the same is not tenable in law as barred by limitation having been filed long after the first demand notice dated 29th August, 2011 and hence, it is liable to be quashed.

2. The petitioner contends that the learned court below notwithstanding the fact that the complaint was not maintainable, in an illegal manner, took cognizance of the offence under Section 138 NI Act and issued process to him, which is arbitrary and wholly unjustified.

3. O.P.No.2 is the complainant, who instituted the complaint i.e. 1 CC Case No.140 of 2011 alleging therein that on 1st March, 2011, the petitioner had taken a private loan of Rs.3.5 lac from him with an assurance to repay the same by 19th June, 2011 and had also issued a post-dated cheque and as the amount was not

refunded, the cheque was presented in the bank for encashment but was dishonored for insufficient funds. Accordingly, after the complaint was filed, the learned court below recorded the initial statement of O.P.No.2 and finally took cognizance of the alleged offence and summoned the petitioner by passing the impugned order under Annexure-2.

4. Heard Ms. Sarada Dash, learned counsel for the petitioner, Mr. P.K.Mohanty, learned ASC for O.P. No.1 State and Mr. P.S. Das, learned counsel appearing for O.P.No.2.

5. As pleaded by the petitioner, O.P.No.2 issued demand notice twice once on 29th August, 2011 and thereafter on 28th October, 2011 claiming payment of the amount alleged to have been received by him by a hand loan. The copies of the notices have been marked as Annexres-3 & 4 respectively. The petitioner claims that O.P.No.2 by using a blank cheque during the time of their partnership business filed the complaint in order to harass and put him to trouble. The principal ground of challenge is that after the first demand notice dated 29th August, 2011 calling upon the petitioner to pay the amount within fifteen days and when it was not obliged, O.P.No.2 was required to file the complaint within one month from the date of cause of action but instead, a second demand notice was issued under Annexure-4 and then, the complaint case was filed which is clearly barred by limitation. Ms. Dash, while advancing her argument in support of the contention of the petitioner, relied upon a decision of the Supreme Court in the case of **Prem Chand Vijay Kumar Vrs. Yashpal Singh and another (2005) 4 SCC 417**. It is contended that in view of the above decision, since the complaint was filed not within the stipulated time after the first demand notice under Annexure-3, it was beyond the period of limitation in view of Section 142(b) NI Act. In the decision (supra), the Apex Court held that a cheque may

be presented repeatedly within its validity period but once notice has been issued and payment not received within fifteen days of the receipt of such notice, payee has to avail the very cause of action arising thereupon and file the complaint. The aforesaid decision was referring to the provisions of Section 142(b) NI Act and it has been observed therein that dishonour of cheque on each presentation gives a fresh right to present it again during the validity period but does not give rise to a fresh cause of action. In respond to the above, Mr. Das, learned counsel for O.P.No.2 cited a decision of the Supreme Court rendered in **M/s. Sicagen India Ltd. Vrs. Mahindra Vadineni and others** decided on 8th January, 2019 which has referred to a three Judge Bench decision in **MSR Leathers Vrs. S. Palaniappan (2013) 1 SCC 177**. It is contended that a criminal liability may be levied even after a second demand notice which is what has been observed in the decision of **M/s. Sicagen India Ltd.** (supra). In the aforesaid case, two demand notices were issued and no complaint was filed even after the first demand notice and under the above circumstances, the Apex Court concluded that such a complaint after issuance of second demand notice is clearly maintainable. In that case, the complainant had in fact issued first notice demanding repayment of the amount and thereafter, the cheques were again presented and returned with the endorsement 'insufficient funds' and since the amount was not paid, the complaint under Section 138 N.I. Act was filed based on the second statutory notice and in the aforesaid background of facts, the Supreme Court in **M/s. Sicagen India Ltd.** (supra) held that the complaint can be entertained. The decision of **MSR Leathers** (supra) was examined by the Supreme Court, wherein, it was observed that the object underlying Section 138 N.I. Act is to promote and inculcate faith in the efficacy of banking system and its operations giving credibility to negotiable instruments in business transactions and to create an atmosphere of faith and reliance by

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discouraging people from dishonouring commitments which are implicit when they pay their dues through cheques and the provision was intended to punish unscrupulous persons who issued cheques for discharging their liabilities without really intending to honour the promise that goes with the drawing up of such a negotiable instrument; it was also intended to enhance the acceptability of cheques in settlement of liabilities and to safeguard and prevent harassment of honest drawers, lastly while concluding that there is nothing in Section 138 N.I. Act that forbids the holder of the cheque to make successive presentation of the cheque and institute the criminal complaint on the strength of second or successive dishonour of cheque. Having regard to the above settled position of law enunciated in **M/s. Sicagen India Ltd.** (supra), there is no escape from the conclusion that the complaint filed by OP No.2 in the present case after issuance of second demand notice has to be held as maintainable notwithstanding the fact that after the first notice subsequent to the dishonour of cheque, no complaint was filed within the stipulated time. In such view of the matter, the contention of Ms Dash, learned counsel for the petitioner challenging the entertainability of the complaint on such ground cannot be sustained.

6. Accordingly, it is ordered.

7. In the result, petition under Section 482 Cr.P.C. filed at the behest of the petitioner sans merit and therefore, dismissed for the reasons discussed herein above.

(R.K. Pattanaik)
Judge