

IN THE HIGH COURT OF ORISSA AT CUTTACK**CRLMC No.1290 of 2011*****Vandana Gupta and Another* *Petitioners******-versus-******State of Odisha and Another* *Opposite Parties*****CRLMC No.731 of 2008*****M/s. Protection Manufacturer Pvt. Ltd. and Others* *Petitioners******-versus-******Prasanna Kumar Nayak* *Opposite Parties*****Advocates appeared in these cases:*****For Petitioner(s)* : Mr. Debasis Das, Advocate*****For Opposite Parties* : Mr. M.B. Das, Advocate
Mr. S.N. Das, Addl. Standing Counsel****CORAM:
THE CHIEF JUSTICE****JUDGMENT
22.04.2022****Dr. S. Muralidhar, CJ.**

1. The present petition by Vandana Gupta (Petitioner No.1) and her husband Pritish Gupta (Petitioner No.2) seeks the quashing of an order dated 18th June, 2008 passed by the learned Sub-Divisional Judicial Magistrate (SDJM), Sadar, Cuttack taking cognizance of the offence under Sections 138 of the Negotiable

Instruments Act, 1888 (NI Act) and Section 420 of the Indian Penal Code (I.P.C.) in Complaint Case No.ICC 272 of 2007 filed by Opposite Party No.2 .

2. CRLMC No.731 of 2008 is filed by the company i.e. M/s. Protection Manufacture Pvt. Ltd. (Petitioner No.1), Pritish Gupta (Petitioner No.2) and Vandana Gupta (Petitioner No.3) assailing the order dated 24th March, 2007 passed by the S.D.J.M. (Sadar), Cuttack directing the complaint petition to be sent to IIC, Madhupatna for investigation under Section 156(c) of the Code of Criminal Procedure, 1973 (Cr.P.C.).

3. The background facts are that M/s. Protection Manufacture Pvt. Ltd. (PMPL), is a company engaged in the manufacture of air coolers and electrical goods. It placed orders for different types of cardboard boxes required for packaging different types of air coolers with M/s. Utkal Packaging Industry Opposite Party No.2 (complainant) who delivered the goods with effect from 19th February, 2005 to 9th April, 2005. The total value of the goods supplied was Rs.2,79,542/-.

4. Although payment of Rs.69,962/- was made by the company i.e. PMPL, the cheques issued for the remaining amount were dishonoured by the Bank on account of 'exceeding of limits'.

5. Initially, the complainant filed two complaint cases i.e. ICC No.1146 of 2005 for dishonour of a Cheque No.741220 and ICC

No.1145 of 2005 for dishonour of Cheque No.741221 under Section 138 of the Negotiable Instrument Act (NI Act) and Section 420 IPC. Cognizance in both the complaint cases was taken against one Piyush Gupta, who was described as the Managing Director of the company, only for the offence under Section 138 of the NI Act.

6. Subsequently, ICC No.272 of 2007 was filed by the complainant against the present Petitioners, this time mentioning that Pritish Gupta is the Managing Director of the company and that since the cheques were dishonoured, there was a fraudulent intention of the Petitioners to cheat the complainant.

7. Admittedly, the complaint was filed on 21st March, 2007 in the Court of the S.D.J.M., Sadar, Cuttack and notice was issued to the IIC, Madhupatna Police Station for investigation under Section 156 (3) of Cr PC. The complainant is stated to have filed an application in the existing complaint cases i.e. ICC Nos.1145 and 1146 of 2005 seeking summons to issue to Pritish Gupta as well. However, the said application was rejected by the S.D.J.M., Sadar, Cuttack on 12th July, 2007. That order was allowed to become final.

8. Coming to know of the order passed by the S.D.J.M., Sadar directing the IIC, Madhupatna to investigate into the matter, the first CRLMC No.731 of 2008 was filed. Subsequently, when the cognizance was taken, the second CRLMC No.1290 of 2011 was

filed by Vandana Gupta, who is the Director of the Company and Pritish Gupta the Managing Director.

9. It may be mentioned here that by an interim order dated 27th April, 2011 it was directed that the NBW issued against the two Petitioners shall remain stayed. In CRLMC No.731 of 2008 an interim order was passed by this Court that no coercive action shall be taken against the Petitioners in connection with Madhupatna P.S. Case No.34 of 2008.

10. Learned counsel for the Petitioner has urged two points. One is that the complaint as far as the offence under Section 138 of the NI Act was concerned, is barred by limitation in terms of Section 142 of the NI Act. He points out that in the counter affidavit filed in CRLMC No.1290 of 2011 there has been admission by the Opposite Parties to the same effect.

11. As regards the order taking cognizance against the Petitioner for the offence under Section 420 of IPC, reliance is placed on the decisions of the Supreme Court in *Uma Sankar Gopalika v. State of Bihar* (2005) 10 SCC 336; *Veer Prakash Sharma v. Anil Kumar Agarwal* 2007 (9) SCALE 502; *G. Sagar Suri v. State of U.P.* (2000) 2 SCC 636 and *Sunil Kumar v. M/s. Escorts Yamaha Motors Ltd.* (2000) 18 OCR (SC) 67 to urge that the complaint as it presently reads does not make out any case against the Petitioners for the offence under Section 420 IPC.

12. Learned counsel appearing for the Opposite Parties on the other hand urged that while the complaints for the offence under Section 138 of the NI Act may not be maintainable on the ground of limitation, they were certainly maintainable for the offence under Section 420 IPC. He referred to the fact that the Petitioners had sought to replace the bounced cheques with fresh cheques, which again were dishonoured on presentation. Therefore, this reflected the intention of the Petitioners not to make payment. According to him, the ingredients of Section 420 IPC were fully satisfied vis-a-vis the Petitioners.

13. The above submissions have been considered. As far as the impugned order of the learned S.D.J.M., Sadar, Cuttack taking cognizance for the offence under Section 138 of the NI Act is concerned, it is plain that vis-a-vis the two Petitioners in CRLMC No.1290 of 2011 a notice under Section 138 of the NI Act was not issued within the time stipulated under Section 142 of the NI Act. In fact, none of time limits were adhered to. Consequently, the SDJM, Sadar, Cuttack was in error in taking cognizance of the said offence against the two Petitioners by the order dated 18th June, 2008 even vis-a-vis the Company and the two Directors i.e. Vandana Gupta and Pritish Gupta. The proceedings against them under Section 138 of the NI Act were initiated belatedly. Therefore, the SDJM was in error in directing the IIC, Madhupatna Police Station to investigate the said complaint under Section 156(3) of Cr.P.C. as far as the offence under Section 138 of the NI Act is concerned.

14. Turning now to offence under Section 420 IPC, a perusal of the copy of the complaint filed by the Petitioners shows that it only refers to the factum of cheques having been issued which were dishonoured. It also refers to the fact that the accused persons offered to substitute the cheques with other cheques which again were dishonoured on presentation. The accused is stated to have received the complainant fraudulently with dishonest intention inducing the complainant to deliver the stock as per the indent placed and thereby committing the act of cheating.

15. While the averments appear to borrow from the language of the statute, going by the explanation of the ingredients of the offence by the Supreme Court in *Uma Sankar Gopalika (supra)*, *G. Sagar Suri (supra)* and *Veer Prakash Sharma (supra)*, there has to be some specific act of inducement by the Petitioners herein revealing an intention to cheat the complainant from the 'very inception'. In the present case, part payment was in fact made of Rs.69,272/-. It does appear that attempts were made in making payments despite the first two cheques having been dishonoured. The averments made by the complainant seem to be made only to satisfy the language of the provision rather than refer to actual acts of the accused which could lead into a prima facie opinion of the offence of cheating having been fulfilled. Consequently, on a reading the complaint, it appears that the necessary ingredients of the offence under Section 420 IPC cannot be said to have been made out against the Petitioners herein.

16. For all of the aforesaid reasons, the impugned order of the learned S.D.J.M., Sadar Cuttack in both the petitions are hereby set aside and the complaint cases against the Petitioners are hereby quashed.

17. The CRLMCs are allowed in the above terms, but in the circumstances, with no order as to costs.

(S. Muralidhar)
Chief Justice

S.K.Jena/Secy.

