

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 151 of 2021

Mitrabhanu Barik

....

Petitioner

Mr. P.K. Samantray, Advocate

-versus-

State of Odisha and another

....

Opposite Parties

Mr. P. Mohapatra, ASC

CORAM: JUSTICE V. NARASINGH

ORDER
09.05.2022

Order No.

13.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the Opposite Parties.
3. Being aggrieved by the order dated 18.11.2020 passed by the learned S.D.J.M. Keonjhar in 1CC Case No.63 of 2020 taking cognizance of the offence under Section 138 of N.I. Act the present CRLMC has been filed by the accused.
4. The principal ground of challenge in the CRLMC is that the notice as envisaged under Section 138(B) of the N.I. Act was issued beyond the stipulated period.
5. Learned counsel for the petitioner has filed a written note of submission in support of his contention. Para 5 and 6 of the said note relevant for just adjudication is quoted hereinunder;

x x x x x *“5. That the petitioner has pointed out the following irregularities in the proceeding which*

vitiating in law for which the cognizance is required to be quashed. The events as per the complaint are necessary for effective adjudication of the case.

28.11.2019 Cheque was issued.

28.02.2020 Cheque was presented for encashment.

29.02.2020 Intimation was given to the complainant regarding funds insufficient.

04.05.2020 The Demand notice was issued.

12.06.2020 The complaint case was filed.

6. That as per 138 (b) of the N.I. Act the notice has to be issued within 30 days from the date of receipt of information from the Bank regarding return of the Cheque as unpaid. Such 30 days' time period is mandatory and its compliance should be as per said provision. Here the Cheque was returned on 29.02.2020. Therefore, the 30 days was completed on 30.03.2020. But the notice was issued on 04.05.2020. There is a gap of 65 days in issuing notice where the statute requires only 30 days." x x x x x

6. In support of his contention learned counsel for the petitioner has also relied on the judgment of this Court reported in **2003 (1) OLR 615** inter alia dealing with non-service of the statutory notice within the time stipulated.

7. Per contra, learned counsel for the complainant submits that the case at hand squarely covered by the order of the Apex Court

passed in Suo moto Writ Petitioner (Serial No.3 of 2022) whereby taking note of the hardship suffered because of the onset of the Covid the apex Court issued series of direction relating to computation of limitation for any suit, appeal, application for a proceeding. The direction so passed by the Apex Court are extracted hereunder;

x x x x x “1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the Court or tribunal can condone delay) and termination of proceedings.

4. The Government of India shall amend the guidelines for containment zones, to state.

“Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements.” x x x x x

8. On a bare perusal of the directions issued by the Apex Court in exercise of its plenary jurisdiction under Section 142 which can be seen that the period of limitation in respect of 138 of the N.I. Act specifically engaged the attention of the Apex Court and it was directed that period from 15.03.2020 till 14.03.2021 shall stand excluded in computing the period prescribed inter alia under the N.I. Act, which is condition precedent for instituting proceedings.

9. Admittedly as culled out above the notice in the case at hand was issued on 04.05.2020, which is covered by the order of the Apex Court though as rightly submitted by the learned counsel for the petitioner on the 65th day.

10. The decision cited by the learned counsel for the petitioner shall not be applicable in the present scenario in view of the direction issued by the Apex Court adverted to hereinabove.

11. On a conspectus of materials on record this Court does not find any infirmity in the order of cognizance and accordingly the CRLMC assailing the same is dismissed being devoid of merit.

(V. NARASINGH)
Judge