

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 365 of 2022

P.K.Ores Private Ltd. and another Petitioners
Mr. Siddheswar Baug, Advocate

-Versus-

SAB Service Station, Keonjhar Opposite Party

CORAM:
JUSTICE R.K.PATTANAIK

Order No.

ORDER
29.11.2022

07. 1. Heard learned counsel for the petitioners and learned counsel for the opposite party.
2. Instant petition under Section 482 of Cr.P.C. is filed by the petitioner for quashing of the criminal proceeding and the order of cognizance dated 4th October, 2021 in I.C.C. Case No. 29 of 2021 passed by the learned JMFC, Barbil on the grounds stated therein.
3. A copy of the complaint is at Anneuxre-1 and the same is perused.
4. For an amount of Rs.46,52,000/-, a cheque was drawn and handed over to the opposite party which stood dishonored and subsequently, the proceeding under Section 138 N.I.Act was initiated against the petitioners which is currently under challenge.
5. Learned counsel for the petitioners submits that the cheque was undated and handed over for the purpose of security, however, the same was mis-utilized and on being presented, it stood dishonoured consequent upon which the petitioners have been prosecuted under Section 138 of the N.I. Act. It is also claimed that the amount of the alleged cheque was shown to have been drawn and presented for encashment was in fact paid by the petitioners to the opposite party.

6. On a bare reading of Annexure-1, the Court finds that there was an understanding between the parties whereby the alleged cheque was issued without any date against the amount due for credit supply and to keep the same as a security and in the event, the amount was not cleared, the same to be utilized for the purpose of encashment. As it is made to appear, the alleged cheque was thereafter submitted for encashment which is on 16th June, 2021. Admittedly, it has been dishonoured by the Bank whereafter the opposite party filed the complaint against the petitioners under Section 138 N.I.Act. Whether the cheque was for the purpose of security or with such an understanding, the cheque was drawn and subsequently presented for encashment is a matter to be examined by the learned court below during trial. Likewise, whether such payment had already been made by the petitioners to opposite party as is claimed at present by the learned counsel appearing for them, it is also to be thrashed out during trial. Hence, it is not a case where the Court is to exercise inherent jurisdiction for a decision which needs examination of evidence on record. The petitioners in any case shall have the opportunity to submit rebuttal evidence before the learned court below in the complaint proceeding. So, therefore, it held by the Court that there is no ground made out for interference.

7. Accordingly, it is ordered.

8. In the result, CRLMC stands disposed of with liberty granted to the petitioners to raise all the grounds at the time of framing of charge and even submit defence evidence before the court of learned JMFC, Barbil during trial in connection with I.C.C. Case No. 29 of 2021 and in the event any such evidence is produced, the same shall be examined and taken cognizance of at the time of its disposal.

9. Interim order passed earlier by this Court shall stands vacated.

(R.K.Pattanaik)
Judge