

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.683 of 2022

Kanta Nath Saraf

.... **Petitioner**
Mr. G. Tripathy, Advocate

-Versus-

Odisha Sales

.... **Opposite Party**
Mr. S. Mohapatra, Advocate for O.P

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
28.09.2022

Order
No.

08.

1. Heard learned counsel for the petitioner and learned counsel for the opposite party.
2. Instant petition under Section 482 Cr.P.C. is filed by the petitioner assailing the impugned order of cognizance dated 17th December, 2021 passed in ICC No.2635 of 2021 by the learned S.D.J.M., Bhubaneswar on the grounds stated therein.
3. Learned counsel for the petitioner submits that the petitioner is made liable to discharge the obligation of his son, who has had business transaction with the opposite party and in that connection, the opposite party had inspected the latter's office and fraudulently picked up the offending cheque and then misutilised it and presented the same for encashment and ultimately, when it stood dishonored, the criminal action under Section 138 of the NI Act was initiated which therefore cannot be sustained morefully considering the fact that it was not at all on the part of the

petitioner to issue any such cheque in favour of the petitioner which is objected to by the learned counsel for the opposite party on the ground that cheque was in fact issued by the petitioner and the same was enquired into by the learned court below which also had undertaken an enquiry and finally took cognizance of the offence and passed the impugned order under Annexure-4 and as such did not commit any wrong or error in that respect.

4. A copy of the notice issued to the petitioner by the opposite party is at Annexure-1 and the same is perused. In fact, the opposite party approached the learned court below in ICC Case No.2635 of 2021 by filing the complaint with the allegation that the cheque was issued by the petitioner for an amount of Rs.5,89,961/-. It is submitted to the Court that the opposite party played fraud and time of inspection secretly picked up the alleged cheque carrying the signature of the petitioner and therefore, the complaint should not have been entertained by the learned court below. However, the learned court below considering the initial statement recorded under Section 200 Cr.P.C. that of the opposite party's representative and after conducting an enquiry in terms of Section 202 Cr.P.C. proceeded to take cognizance of the offence under Section 138 of the NI Act. In so far as the contention of the learned counsel for the petitioner that the opposite party did the mischief while collecting the offending cheque, according to the considered view of the Court, it needs an enquiry and examination by the court below which can only be undertaken either at the time of enquiry and/or trial. Since the petitioner has been summoned pursuant to the complaint filed by the opposite party shall also have the opportunity to claim discharge on any such ground. In such view of

the matter, having regard to the nature of litigation and contention so advanced by the learned counsel for the petitioner regarding fraud etc., the Court is of the view that it is not a fit where on such ground inherent jurisdiction should be exercised to quash the complaint.

5. Accordingly, it is ordered.

6. In the result, the CRLMC stands dismissed. However, the petitioner is granted the liberty to raise any such ground seeking discharge at the time of framing of charge in connection with ICC No.2635 of 2021 and in the event, any such application is moved by him, the learned S.D.J.M., Bhubaneswar shall do well to consider it and pass appropriate order in accordance with law.

7. An urgent certified copy of this order be granted as per rules.

(R.K. Pattanaik)
Judge

TUDU