

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.703 of 2012

Trilochan Dash and another ***Petitioners***

-versus-

Smt. Kumuduni Mishra ***Opposite Party***

CORAM: JUSTICE S. PUJAHARI

ORDER

11.04.2022

Order

No.

04.

1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioners with a prayer to quash the proceeding in I.C.C. No.214 of 2007 pending in the court of J.M.F.C., Puri.
3. Heard.
4. The Petitioners in this case has sought for quashment of the aforesaid proceeding, which is initiated under Section 138 of N.I. Act, on the ground that a false and concocted allegation has been made against them and the cheque in question was given as a security and not for discharge of debt and liability, but for money obtained from the Petitioners as a loan and was a

blank cheque. Otherwise also, the cheque being a blank cheque and the body of the cheque was not filled up by the drawer of the cheque, i.e., Petitioner No.2. In an alternative, it has also been submitted that the cheque was drawn by the Petitioner No.2, the court, therefore, also could not have taken cognizance and initiated the proceeding against both the Petitioners.

5. However, the compliant petition discloses that the Petitioners had received Rs.3,60,000/- towards consideration to transfer a piece of land by executing a sale deed in favour of the Opposite Party-Complainant, which is located in Mouza-Kumutipatana appertaining to Plot No.45/365, Khata No.200/21 for an area Ac.0.023 decimals out of total area Ac.1.460 decimals within one months and execute an agreement for the purpose on 19th February, 2007. In spite of the same, neither register his land nor refund her amount and after several times of request, Petitioner No.1 gave a cheque which was drawn by Petitioner No.2, wife of the Petitioner No.1 for Rs.1,60,000/- and committed to again given 15 days time to execute sale deed. After lapse of aforesaid period, when they did not execute the sale deed, the Opposite Party-

Complainant stated to have deposited the cheque for collection through her banker, but the same was dishonored for insufficiency of funds. Hence, the Opposite Party-Complainant gave an advocate notice to the Petitioners to the drawal of the cheque to pay her amount on receipt of the notice, as the amount was not paid, she filed the complaint against the Petitioners alleging under Section 138 of N.I. Act.

6. However, as it appears to this Court that in the aforesaid case, the Petitioners could not satisfy the court with regard to error in the order taking cognizance and proceeding initiated against them.

7. Without expressing any opinion on the merit of such contention except the fact that arraying the Petitioner No.1 though he had co-extensive liability for which the cheque was drawn by his wife, the Court shall not proceed against him in view of the law laid down by the Apex Court in the case of *Alka Khandu Avhad v. Amar Syamprasad Mishra* (Criminal Appeal No.258 of 2021 disposed of on 8th March, 2021) wherein it has been held as follows:-

“Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. Section 138 of the N.I. Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the N.I. Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque.

8. Considering the aforesaid facts and submissions made as well as the law laid down in the case of *Alka Khandu Avhad* (supra), the proceeding against the Petitioner No.1 is liable to be dismissed.

9. Accordingly, the aforesaid proceeding qua the Petitioner No.1 stands quashed.

10. So far as Petitioner No.2 is concerned, since it is a proceeding under Section 138 of N.I. Act, court shall proceed with the matter and conclude the trial within a period of six months hence.

11. With the aforesaid order, this CRLMC stands disposed of.

(S. Pujahari)
Judge

DA

