

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLLP No.15 of 2021

Rabindra Kumar Nayak* *Petitioner

Mr. B.R. Biswal, Advocate

-versus-

1. State of Odisha

2. Jagabandhu Jena* *Opp. Parties

None

CORAM:

JUSTICE S.K. SAHOO

ORDER

11.02.2022

Order No.

10.

This matter is taken up through Hybrid Arrangement (Video Conferencing/Physical Mode).

Heard learned counsel for the petitioner.

This leave petition under section 378 (4) of Cr.P.C. has been filed by the petitioner Rabindra Kumar Nayak seeking for special leave to prefer an appeal against the impugned judgment and order dated 21.09.2019 of the learned Addl. Sessions Judge, Anandapur passed in Criminal Appeal No.04. of 2019 in setting aside the judgment and order dated 01.05.2019 passed by the learned S.D.J.M., Anandapur in I.C.C. No.125 of 2015 in acquitting of the opposite party no.2 Jagabandhu Jena of the

charge under section 138 of the Negotiable Instrument Act. While acquitting the opposite party no.2, the learned Appellate Court has assigned the following reasons.

"7. As per factual aspects, the issuance of 9 nos. of cheque for supply of bricks by the appellant on different dates has been proved by the complainant by proving his pass book vide Ext.1 which shows the name of the appellant. Similarly, issuance of cheque on 15.01.2015 vide Ext.2 by the appellant has been proved by the complainant and though the appellant took the plea of missing of the cheque along with some other cheques for which S.D. entry was made on the basis of the missing report but the same has been disbelieved by the learned lower Court. The provision under section 118 and 138 N.I. act creates a presumption in favour of the holder of the cheque. As per Section 138 N.I. Act, the cheque in question must be drawn "for discharge, in whole or in part, of any debt or other liability." The explanation appended to Section 138 N.I. Act speaks "debt or other liability" means *a legally*

enforceable date or other liability. The enforceable of the debt or any other liability can be recovered as per Limitation Act which speaks that the same can be recovered within the period of limitation for 3 years from the date of accruing of the debt or liability. So a cheque for time barred debt and dishonor thereof cannot form the foundation of the criminal prosecution under section 138 N.I. Act. Here in this case, the last cheque was issued by the complainant in order to get the bricks from the appellant is on 26.02.2011 and the total amount of 9 nos. of cheques was for Rs.4,50,000/-. So calculating the last date of issuance of cheque by the complainant, for sum of Rs. 4,50,000/- which the appellant is liable should be recovered by 26.02.2014. There is no pleading or evidence on behalf of the complainant that within the said 3 years any written acknowledgment or part payment of the debt or liability was made by the appellant for which period of limitation again extended for 3 years. As such, I am of the view that the cheque issued by the appellant for the purpose of

debt or liability towards the complainant is not enforceable under law as per Limitation Act. Hence, the appellant cannot be convicted for the offence under section 138 N.I. Act for a cheque which issued for non-enforceable debt. Accordingly, the judgment of the learned SDJM, Anandpur needs interference. Hence order."

Learned counsel for the petitioner relying on the decision of the Hon'ble Supreme Court in the case of **A.V. Murthy -Vrs.- B.S. Nagahasavanna reported in (2002) 2 Supreme Court Cases 642 and** a Division Bench decision in the Kerala High Court in the case of **K.K. Ramakrishna -Vrs.- K.K. Parthasaradhy and Ors., reported in 2003 (2) Kerala Law Times, 613** and a decision of Karnataka High Court in the case of **S. Parameshwarappa -Vrs.- S. Choodapa reported in 2007 CRL.L.J. 586 (Karnataka)** and a decision of Kerala High Court in the case of **Ramakrishnan -Vrs.- Gagadharan Nair reported in 2007 Crl. L.J. 1486** contends that the reasons given by the learned Appellate Court is not proper and justified.

After going through the impugned judgment of the learned Addl. Sessions Judge, Anandpur in Criminal Appeal No.04. of 2019 and on hearing the

learned counsel for the petitioner, leave is granted.

The learned counsel for the petitioner shall file the appeal memo within four weeks from today. The appeal will be placed for admission.

The CRLLP petition is disposed of.

Urgent certified copy of this order be granted on proper application.

(S.K. Sahoo)
Judge

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