

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.352 of 2013

U.K.D.V. Prasad Rao

.... Petitioner
Mr. S.N. Satpathy, Advocate

-Versus-

Lala Yoganandalal and another

.... Opposite Parties
None

CORAM:
JUSTICE R.K. PATTANAIK

DATE OF JUDGMENT: 19.07.2022

1. Instant petition under Section 482 Cr.P.C. is at the behest of the petitioner challenging the maintainability of the criminal proceeding and issuance of notice in C.C. No.4 of 2013 pending in the file of learned Chief Metropolitan Magistrate, Vishakhapatnam on the grounds *inter alia* that the cause of action vis-à-vis the alleged transactions between the parties arose within the State of Orissa and therefore, the impugned action is to be interfered with in exercise of the inherent jurisdiction of this Court.

2. The petitioner contends that notice under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the N.I. Act') was received from the court of Chief Metropolitan Magistrate, Vishakhapatnam with the appearance date fixed on 22nd February, 2013 and to submit evidence and answer the charge which is based on vague and false allegations made at the instance of OP No.1. According to the petitioner, his wife rather was served with the legal notice dated 16th August, 2012 demanding payment in relation to alleged sale transaction and thereafter, notice (Annexure-2) was received for her appearance in the complaint case. The details of the transactions have been narrated by the

petitioner denying the liability whatsoever claimed by OP No.1. In fact, the petitioner, while responding to the demand, claimed that there was no any occasion to handover a cheque and its dishonour since the consideration money was deposited vide Annexure-3 series. The petitioner further questioned the jurisdiction of the court concerned to entertain the complaint on the ground that the cause of action vis-a-vis the alleged transaction said to have taken place at Bhubaneswar.

3. Heard Mr. S.N. Satpathy, learned counsel for the petitioner. However, none appears for OP No.1.

4. The petitioner questions the impugned notice (Annexure-2) on the ground that the allegations in complaint do not constitute any offence which also stand uncorroborated and besides that, action under Section 138 of the N.I. Act is not maintainable since the statutory requirements have not been followed besides the fact that the Chief Metropolitan Court at Vishakhapatnam is having no jurisdiction to entertain it since the cause of action arose within the State of Orissa.

5. Mr. Satpathy submits that such a complaint is filed by OP No.1 at the place outside the State of Orissa only to harass the petitioner and extract more money when there is nothing due and payable by him vis-à-vis the alleged sale. It is further contended that when the entire transaction has taken place in Orissa, the complaint with regard to payment of consideration money could not have been filed at Vishakhapatnam. While contending so, a decision of this Court in **Narottam Bastia Vrs. State of Orissa and another** reported in 2017 (II) OLR 767 is cited by Mr. Satpathy. It has also been pleaded that this Court is having the jurisdiction to entertain the challenge in view of its earlier judgment in **Sri Kailash**

reported in 2014 (I) OLR 211. In course of hearing, the Court had raised a preliminary question regarding the jurisdiction of this Court when the complaint is filed at Vishakhapatnam. In other words, the question is, whether, a proceeding pending in the court in the State of Andhra Pradesh can be a subject of challenge before this Court?

6. Admittedly, from the pleading, it appears that the wife and cousin of the petitioner had sale transactions with OP No.1, who allegedly claimed certain dues not to have been paid which stands denied. In that connection, the complaint seems to have been filed by OP No.1 in the court at Vishakhapatnam which is presently sought to be quashed. From Annexure-1 series which is the legal notice received by the wife of the petitioner, it is made to understand that a cheque was issued in favour of OP No.1 and the same was deposited in latter's banker at Vishakhapatnam for collection which, however, stood dishonoured with an endorsement dated 18th June, 2012 that the account did not have sufficient funds. The complaint is in relation to the above dishonour of cheque which was claimed to have been again presented on 17th July, 2012 but was returned unpaid by the banker's memo dated 31st July, 2012 with the same reason as having insufficient funds.

7. The preliminary question is that whether this Court exercising power under Section 482 Cr.P.C. can set aside or quash a criminal proceeding pending before the court of the Chief Metropolitan Magistrate, Vishakhapatnam in the peculiar facts and circumstances of the case as narrated herein before. As regards the decision in **Narottam Bastia** (supra), it has been held by this Court that the court within the jurisdiction of which the cheque was presented and dishonoured shall have to try the case in view of the amended provision to Section 142(2) of the N.I. Act. In the present case, as it appears from Annexure-1 series, the alleged cheque stated

to have been presented at Vishakhapatnam, if at all the averments therein are to be believed and accepted at its face value. If such is the case, then OP No.1 can be said to have rightly filed the complaint at Vishakhapatnam where his banker is situated. The transactions might have taken place in Orissa and for that, civil litigations could have been brought before any court situated at such places where a part of cause of action arose but for the purpose of a criminal action under Section 138 of the N.I. Act, in view of Section 142 (2), it has to be at a place where the cheque was presented and dishonoured. In so far as the decision in **Sri Kailash Chandra Mishra** (supra) is concerned, this Court, while exercising writ jurisdiction concluded that in view of the amendment to Article 226 of the Constitution of India, correctness of a proceeding lying before a court situated beyond its jurisdiction can be called in question. In the said case, the cheque was issued at Balasore which was dishonoured at Bhubaneswar but the complaint was filed outside the State and under such circumstances, the Court while exercising writ jurisdiction quashed the complaint filed before the court at Daman in the State of Uttaranchal. In the instant case, the transactions stated to have taken place within the State but the alleged cheque as claimed by OP No.1 stood dishonoured at Vishakhapatnam, whereafter, the complaint was filed in the court of Chief Metropolitan situated there. Since the entire cause of action took place inside the State, but then the complaint was filed in the State of Uttaranchal, this Court, in the aforesaid case, quashed the complaint exercising jurisdiction under Article 226 of the Constitution of India which is distinguishable to the facts and circumstances of the present case wherein OP No.1 alleged to have presented the cheque in question with his banker at Vishakhapatnam where the same failed to be honoured. Even by considering the decision in **Narottam Bastia** ibid, it may be said that

the complaint was maintainable at Vishakhapatnam. In view of the above, the Court is of the considered view that the petitioner would have to respond to the notice in question which has been received under Annexure-2 or if so advised, may also question the maintainability of the complaint on merits by approaching the High Court of Andhra Pradesh since above is the prima facie view of this Court which is based on the available materials.

8. Accordingly, it is ordered.

9. In the result, petition under Section 482 Cr.P.C. stands dismissed.



(R.K. Pattanaik)
Judge

KC Bisoi/Secretary