

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1713 of 2018

Chandan Ku. Panda

....

Petitioner

-versus-

Annapurna Panda

....

Opposite Party

CORAM: JUSTICE S.PUJAHARI

ORDER
29.07.2022

Order No.

- 09.
1. This matter is taken up through Hybrid mode.
 2. Heard the learned counsel for the Petitioner and the learned counsel for the Opposite Party-complainant.
 3. Petitioner sought for quashment of the criminal proceeding in I.C.C. Case No.83 of 2017, pending in the court of S.D.J.M., Udala, on the ground that there was improper notice.
 4. On perusal of the notice, it is seen that there was improper notice to make payment as required under Section 138(b) of the N.I. Act, which is a condition precedent to lodge a complaint. Admittedly three cheques, total of Rs.4,15,000/- were issued but the same were dishonored and when given Demand notice, the complainant appears to have made claim of Rs.2,05,000/- which was over written as Rs.4,06,000/- and in

the words the amount remains “two lakhs”. Therefore, there appears to be improper notice. In the case of ***K.R. Indira Vrs. Dr. G. Adinarayana***, reported in ***AIR 2003 SC 4689***, wherein the Apex Court has held as under:

“In a given case if the consolidated notice is found to provide sufficient information envisaged by the statutory provision and there was a specific demand for the payment of the sum covered by the cheque dishonoured, mere fact that it was a consolidated notice, and/or that further demands in addition to the statutorily envisaged demand was also found to have been made may not invalidate the same. In the present case, consolidated notice of demand for dishonor of four cheques was made and the contents of notice in question showing that not only the cheque amounts were different from the alleged loan amounts but the demand was made not of the cheque amounts, but only the loan amount as though it is a demand for the loan amount and not the demand for payment of the cheque amount nor could it be said that it was a demand for payment of the cheque amount and in addition thereto made further demands as well. Thus, the notice in question is imperfect in present case not because it had any further or additional claims as well but it did not specifically contain any demand for the payment of the cheque amount, the non-compliance with such a demand only being the incriminating circumstance which expose the drawer for being proceeded against under Section 138 of the Act. Hence order of acquittal of accused cannot be interfered with.”

So also in the case of ***Rahul Builders Vrs. Arihant Fertilizers & Chemicals and another***, reported in ***(2008) 2 SCC 321***, wherein it has been held as follows:

“Service of a notice , it is trite, is imperative in character for maintaining a complaint. It creates a legal fiction Operation of Section 138 of the Act is limited by the proviso. When the proviso applies, the main section would not. Unless a notice is served in conformity with proviso (b) appended to Section 138 of the Act, the complaint

petition would not be maintainable. Parliament while enacting the said provision consciously imposed certain conditions. One of the conditions was service of a notice making demand of the payment of the amount of cheque as is evident from the use of the phraseology "payment of the said amount of money". Such a notice has to be issued within a period of 15 days from the date of receipt of information from the bank in regard to the return of the cheque as unpaid. The statute envisages application of the penal provisions. A penal provision should be construed strictly; the condition precedent wherefor is service of notice. It is only thing to say that the demand may not only represent the unpaid amount under cheque but also other incidental expenses like costs and interests, but the same would not mean that the notice would be vague and capable of two interpretations. An omnibus notice without specifying as to what was the amount due under the dishonoured cheque would not subserve the requirement of law."

The Petitioner has averred in Paragraph-10 of the application (CRLMC) as under:

"That, it is submitted that the Cheque in question was never issued towards discharge of any debt or liability. The three amounts i.e. Rs.4,00,000/-, Rs.4,15,000/- (Rs.2,10,000/- + Rs.1,05,000/- + Rs.1,00,000/-) & Rs.4,06,000/- as mentioned in the so called Demand Notice dtd. 31.07.2017 clearly proves the malafide intention of the Opp. Party-Complainant.

5. Learned counsel for the Opposite Party submits that there being a typographical error and demand having been made for all the cheque amounts even though in summing up the amounts there was a mistake, the Petitioner cannot be stated to have been misled by the same, and the notice can not be construed as improper and hence, this Court should not quash the proceeding.

6. This Court is of the view that the notice tendered as a condition precedent for giving rise to the cause of action for a prosecution under Section 138 of the N.I. Act being defective and improper one, the prosecution lunched thereafter for non-payment of the amount demanded, is incompetent. Hence, the same stands quashed.

7. Accordingly, this CRLMC is allowed.

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

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