

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3326 of 2013

Niranjan Barik.

....

Petitioner

-versus-

Bhaskar Nayak.

....

Opposite Party

CORAM: JUSTICE S.PUJAHARI

ORDER
01.08.2022

Order No.

04.

1. This matter is taken up through Hybrid mode.
2. The petitioner in this application under Section 482 of the Code of Criminal Procedure (for short “Cr.P.C.”) has prayed for quashing of the order dated 29.07.2013 passed by the learned Addl. Sessions Judge, Jeypore in Criminal Revision No.8 of 2013 confirming the order of the learned S.D.J.M., Koraput passed in I.C.C. No.46 of 2011 rejecting his complaint petition.
3. Heard the learned counsel for the petitioner-complainant. None appears for the opposite party-accused in spite of the sufficiency of notice.

4. The sole contention of the learned counsel for the petitioner in this case is that though demand notice was served by the petitioner-complainant on the opposite party-accused and postal A.D. was returned, but thereafter, within the stipulated period when the offending cheque amount was not paid, the petitioner made the complaint. The learned Magistrate, however, on a wrong premises that as the A.D. was not disclosing the date of receipt of the notice, held the complaint to be premature and dismissed the same. A revision that was carried against the said order was also dismissed. It is her further contention that though the petitioner filed an affidavit about the receipt of the notice by the opposite party-accused, but the Court without taking note of the same and holding that the postal receipt and acknowledgment were not containing the seal, dismissed the complaint. It is, therefore, urged on behalf of the petitioner that the impugned order being illegal and arbitrary is liable to be quashed.

5. Needless to say that cause of action for filing a complaint under Section 138 of the N.I. Act shall arise only when the drawer issuing the offending cheque, on dishonor, in spite of the demand made within the statutory period through a notice, does not pay the amount within fifteen days of receipt of the notice. Therefore, the complaint petition must indicate that the drawer was given an opportunity by way of statutory notice to pay the amount of the offending cheque. On expiry of fifteen days of receipt of such notice, if the amount is not paid, then

the same can attract the criminality. In this case, it is not disputed that statutory notice was given and also the acknowledgement was filed regarding receipt of the notice. Since the postal A.D. did not disclose the date of receipt of the notice by the drawer / noticee, he could have ascertained the same from the Postal authority to know as to when the aforesaid notice was received by the addressee, inasmuch as only after fifteen days of expiry of receipt of such notice, if no payment is made, a person can be prosecuted under Section 138 of the N.I. Act or the complainant in worse view of the matter could have stated in the complaint as to when he received the A.D. Such averment is not available either in the complaint petition or in the affidavit. In such a premises, the Court was not in a position to ascertain when the alleged cause of action arose for filing the complaint and, as such, held the complaint to be premature and dismissed the same. Even though not agreeing with the observation that it was premature, but it was incumbent upon the petitioner to make at least an assertion in the complaint petition with regard to receipt of notice, and if no document was available with him regarding receipt of such notice, then he could have very well stated on oath as to when the A.D. was received by him, to assert the cause of action for the prosecution. There being no such compliance, at the cost of repetition, this Court is of the view that the ingredients of the offences being not disclosed, the complaint is incompetent, the Court could not have taken cognizance of the offence upon such complaint. Therefore, the impugned order of the learned

S.D.J.M. expressing reluctance to take cognizance and dismissing the complaint, and the confirming order passed by the revisional Court warrant no interference by this Court in exercise of the power under Section 482 of Cr.P.C., inasmuch as no palpable illegality is found therein.

6. In the result, this CRLMC filed challenging the impugned orders being devoid of merit stands dismissed.

MRS



(S. Pujahari)
Judge