

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 5408 of 2015

Prasanta Kumar Dash

.... Petitioner
Mr. G.N.Mishra,, Advocate

-Versus-

Suryakanta Behera

.... Opposite Party
None

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
12.08.2022

Order No.
06.

1. Heard learned counsel for the petitioner. None appears for the opposite party.
2. Present petition under Section 482 of Cr.P.C. is filed by the petitioner for quashing of the order of cognizance (Annexure-2) passed by the court below in I.C.C. Case No. 4099 of 2009 on the grounds stated therein.
3. In fact, the court below after recording initial statement of the opposite party and verifying the documents passed the impugned order dated 12th November, 2015 taking cognizance of offence under Section 138 of the N.I. Act on 23rd June, 2010, whereafter, the petitioner appeared and filed a petition to drop the proceeding which was however not entertained on the ground of maintainability.
4. Learned counsel for the petitioner submits that the cheque was presented on 11th July, 2009 and stated to be dishonored on the

same day and thereafter, a legal notice was issued which was received by on 19.08.2009. The learned counsel for the petitioner further submits that considering the grounds raised before the court below, the order of cognizance should have been recalled and the proceeding ought to have been dropped. However, the Court finds that the learned court below declined to the drop the proceeding as it was against the final order and held that the petition was not to be maintainable. The Court is not inclined to interfere with the above order of the court below, however, is of the view that the ground which was raised and present stand taken before this Court may be urged at the time of framing of charge. In other words, the petitioner may raise all such grounds while seeking discharge. Furthermore, the Court is not inclined to intervene for the fact that the ground which has been raised is factually based which can only be examined by the court below at the appropriate stage.

5. Accordingly, it is ordered.

6. In the result, CRLMC stands dismissed. However, the petitioner is at liberty to raise all the grounds at the time of framing of charge in I.C.C. Case No. 4099 of 2009 which in the event so raised the Court shall do well to pass appropriate order as per and in accordance with law.

(R.K. Pattanaik)
Judge