

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC NO.868 of 2015

(In the matter of application under Section 482 of the Criminal Procedure Code, 1973.).

Bighnoraj Mohapatro ***Petitioner***

-versus-

State of Orissa and another ***Opposite Parties***

For Petitioner : ***Mr. T. Nanda , Advocate***

For Opposite Parties : ***Mr. M. Mishra, ASC [O.P. No.1]***
Mr. A. Sahoo, Advocate[O.P. No.2]

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING :01.11.2022

DATE OF JUDGMENT:01.12.2022

G. Satapathy, J.

1. This is an application U/S.482 of Cr.P.C. by the petitioner seeking to quash the orders passed on 29.11.2008 and 06.01.2015 by learned S.D.J.M., Bolangir in 1.C.C. Case No.128 of 2008 taking cognizance of offence U/S.138 of N.I. Act and issuance of

summon to the petitioner respectively as well as consequently the entire criminal proceeding.

2. The inter-se dispute between the parties lies in a narrow compass of dishonor of cheques, but the complaint is claimed to be not maintainable by the petitioner on technicality. Hence, this Court while refraining itself from elaborating the entire gamut of facts involved in this case reiterates only the relevant facts for disposal of the CRLMC. OPNo.2 as complainant has instituted a complaint in 1.C.C. Case No.128 of 2008 against (i) Purchase Officer, District Purchase Centre (petitioner) (ii) Smt. J. Bhoi, In-Charge, Paddy Procurement Centre and (iii) The Civil Supply Officer-Cum-Divisional Manager, all working in Orissa State Civil Supply Corporation (OSCSC) Ltd., Bolangir for commission of offence U/Ss.420/120(B)/34 of IPC and Section 138 of N.I. Act.

2.1 It is stated in the complaint that the complainant is a registered farmer of village Loisingha having Farmer Identity Card No.10101 issued by R.I., Loisingha and it is alleged that on 04.02.2008 the accused No.2 (J. Bhoi) purchased 536.91 quintals of paddy worth Rs.3,99,998/- from the complainant by duly entering upon the sale in the farmer identity card of the complainant and in lieu of the paddy, on 21.07.2008 the accused

Nos.2 (J. Bhoi) and 3 (petitioner) issued two cheques bearing No.909970 and 909971 in favour of the complainant to be drawn from the State Bank of India of Loisingha Branch which upon presented on 05.08.2008 returned back unpaid by the Bank for insufficient of funds. On consideration of complaint together with initial statement of complainant in shape of affidavit, the learned S.D.J.M., Bolangir by the impugned order took cognizance of offences U/S. 138 of N.I. Act and issued process against the petitioner on 06.01.2015 by issuing summons which was received by the petitioner.

2.2 Feeling aggrieved with the impugned orders, the petitioner has challenged it in this CRLMC application on the ground that since the cheques in question were issued by him in his official capacity, his prosecution is protected U/S.197 of Cr.P.C. which is a condition precedent for taking cognizance of offence for the act of the Government Servant in due discharge of official duty.

3. In the course of hearing the CRLMC application, Mr. Trilochan Nanda, learned counsel for the petitioner relying upon the decisions (i) *Jaysingh v. K.K. Velayutham and another; (2006) 9 SCC 414*, (ii) *K. Suresh v. M/s. Lloyds Finance Ltd. and another; 2009 (1) Crimes 321 (Delhi)* and *K. Suresh and others*

v. Arihant Hire Purchase Co. Ltd.; (2007) 2 GLR 375 submits that since the petitioner was working as a Purchase Officer at the relevant time of issuance of cheques for OSCSC Ltd., no liability U/S.138 of N.I. Act can be attracted against the petitioner. It is further submitted by him that the act of the petitioner being in due discharge of his official duty, the same cannot be constituted as personal liability, rather the action of the petitioner is protected by Section 197 of Cr.P.C. by which prior sanction is mandatorily required before taking cognizance of any offences including offence U/S.138 of N.I. Act, but the learned S.D.J.M., Bolangir has taken cognizance of offence without obtaining prior sanction U/S.197 of Cr.P.C. against the petitioner and thereby, the proceeding against the petitioner is not maintainable in the eye of law. It is accordingly prayed by the learned counsel for the petitioner to quash the impugned orders.

4. Learned counsel appearing for OP No.2 opposes the submission of the petitioner vehemently by inter-alia contending that the immunity as provided U/S.197 of Cr.P.C. is not attracted for the act of the petitioner and the impugned orders having been passed by the learned Court in due application of mind need no inference by this Court. It is further submitted that since the

petitioner had issued cheques which were remained unpaid on presentation with the banker of complainant and OPNo.2 having issued Demand notice within a stipulated time resulting in institution of complaint by OPNo.2 and the learned S.D.J.M., Bolangir has rightly taken cognizance of offences U/S.138 of N.I. Act. Learned counsel for OPNo.2, however, has relied upon the decision in *Vinod Kumar Asthana v. Central Bureau of Investigation* decided on 11.10.2022 in W.P.(CRL) 643 of 2019 in support of his contention that prior sanction against the petitioner is not required for taking cognizance of offence in this case.

5. In view of the rival submissions, the moot question required to be examined in this case is whether the impugned order taking cognizance of offence U/S.138 of N.I. Act is unsustainable in the eye of law for want of sanction U/S.197 of Cr.P.C. against the petitioner, who claims himself to be a public servant. Indisputably the OPNo.2 has instituted the complaint against the petitioner and others in 1.C.C. case No.128 of 2008 by describing the petitioner and two others as accused persons in the Column-2 of the complaint which is extracted below:

<i>Name, age and other description of the accused persons</i>	<i>1. The Civil Supply Officer cum Divisional Manager, Orissa State Civil Supply Corporation Ltd., PO/PS/Dist. Bolangir.</i>
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	2. Sri J.Bhoi, The In-Charge, Paddy Procurement Centre, OSCSC, Ltd., Loisingha PO/PS. Loisingha, Dist. Bolangir. 3. The Purchase Officer, Dist. Purchase Centre, Bolangir, OSCSC Ltd., PO/PS/Dist. Bolangir. (PETITIONER) Accused No.1 is the principal authority of the Orissa State Civil Supply Corporation and under his instruction accused No.2 and 3 are performing their duty as the In-Charge and Purchase Officer of the Corporation.
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It is also never disputed by OPNo.2 about identity of the petitioner as the Purchase Officer working under OSCSC Ltd. According to Section 21 (Twelfth)(b) of IPC, “every person in the service or pay of a local authority, a **corporation** established by or under a Central, Provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956) is a public servant” and the description given in Column-2 of the complaint as has been referred to above makes it apparently clear that the petitioner is a public servant which is further invigorated by the averments made by the petitioner at paragraph 4 of the CRLMC that the petitioner was working as

Inspector of Supplies with additional duty of Purchase Officer, OSCSC Ltd., Bolangir which was never disputed by OPNo.2 and the complaint states that the petitioner was performing his duty as the In-Charge and Purchase Officer of the Corporation under the instruction of accused No.1-Civil Supply Officer. The complainant has also averred in the complaint that accused No.2 purchased paddy from him and Accused Nos.2 (J. Bhoi) and Accused No. 3 (petitioner) issued two cheques in the name of complainant which were dishonoured on presentation for collection at State Bank of India, Bolangir.

6. On scrutiny of the complaint and the facts narrated above, admittedly, the petitioner has not issued the cheques in question from his personal account, rather he has issued the cheques in question in official capacity as Purchase Officer of OSCSC Ltd., Bolangir. In this case the criminal liability sought to be fastened on the petitioner on account of his act in discharge of his official duty for the Corporation is the vicarious liability. Although the complainant has averred that the petitioner was performing duty as a Purchase Officer in the Corporation but the petitioner liability being vicarious liability on account of his duty for the Corporation, it can be safely presumed that the respondent-

opposite party No.2 was required to aver in the complaint that he was In-Charge of and responsible to the Corporation for purchase of paddy and, thereby, the Corporation as well as the petitioner were liable for prosecution U/S.138 of N.I. Act so as to attract the vicarious liability on the petitioner. Merely the petitioner being described as Purchase Officer of the Corporation is not sufficient to attract the vicarious liability against him in view of the fact that he was admittedly discharging duty under the instruction of accused No.1 who was the Civil Supply Officer-Cum-Divisional Manager, OSCSC Ltd.

7. Be that as it may, the petitioner seeks to quash the order taking cognizance of offence U/S.138 of N.I. Act for want of sanction U/S.197 of Cr.P.C. and it is clear that the petitioner was a public Servant within the meaning of Section 21 of IPC at the relevant time and was discharging his official duty for the Corporation and, thereby, the provision of prior sanction U/S.197 of Cr.P.C. gets automatically attracted in view of the admitted fact that the petitioner was performing only his official duty while issuing the cheques in question. Law is very well settled that when the offence alleged to have been committed by the accused has some reasonable nexus with due discharge of his official duty as a

Government Servant, the immunity from prosecution against such Government servant automatically comes into play inasmuch as the provision of Section 197 of Cr.P.C. is not an empty formality and it has been couched in the specific language that no Court shall take cognizance of such offences except with previous sanction of the competent authority.

8. In this case the petitioner was a Government Servant and the cheques in question were issued by him in the course of his discharge of official duty and, thereby, prior sanction U/S.197 of Cr.P.C. was mandatory condition precedent before taking cognizance of offence U/S.138 of N.I. Act. In the course of hearing of the CRLMC, learned counsel for the petitioner has also placed reliance on the decision of **K. Suresh** (supra) wherein the High Court of Delhi while respectfully agreeing with the conclusion arrived at by a Division Bench of Guwahati High Court in **K. Suresh and others v. Arihant Hire Purchase Co. Ltd.;** (2007) 2 GLR 375 {Criminal Revision No.174 of 2002 disposed of on 08.08.2006} has held that:

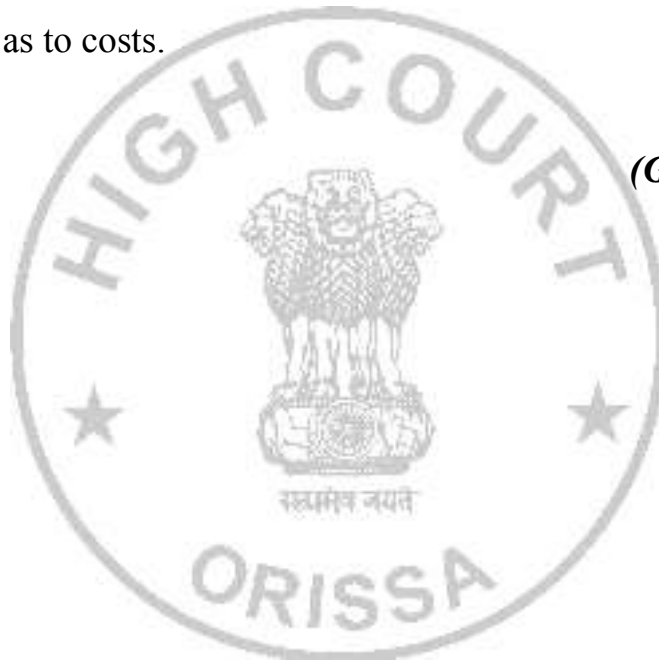
“prior sanction for prosecution of the Managing Director in terms of Section 197 of Cr.P.C. would be mandatory before the learned M.M. can take cognizance of offences.”

In fact in this case, a bare perusal of complaint itself discloses that the petitioner had issued the cheques in discharge of his official function under the instruction of accused No.1 who is also a State Government Servant. It is not out of place to mention here that the judgment relied on by opposite party No.2 in ***Vinod Kumar Asthana*** (supra) is found distinguishable from the facts of the present case inasmuch as in ***Vinod Kumar Asthana*** (supra), the matter relates to subsequent grant of sanction, but in this case there is no sanction at all.

9. In view of the above facts and discussions, according to the complaint itself, the petitioner was performing his duty as the Purchase Officer under the instruction of accused No.1 who was the Civil Supply Officer-Cum-Divisional Manager, OSCSC Ltd. then, but the learned S.D.J.M., Bolangir took cognizance of offence U/S.138 of N.I. Act by an order passed on 29.11.2008 in 1.C.C. Case No.128 of 2008 without prior sanction as mandatorily required in terms of Section 197 of Cr.P.C. for proceeding against the petitioner in the matter and issued process against him(petitioner) by way of summon dated 06.01.2015 and both the orders being unsustainable in the eye of law are hereby set-aside. It is, however, open to opposite party No.2-complainant to seek

prior sanction in accordance with law in terms of Section 197 of Cr.P.C. for launching prosecution against the petitioner in the matter. The complaint now will be listed again before the Court in seisin of the case on the date already fixed for passing appropriate order.

10. Resultantly, the CRLMC is accordingly allowed to the extent indicated above on contest, but in the circumstance, there is no order as to costs.



(G. Satapathy)
Judge

Orissa High Court, Cuttack,
Dated the 1st December, 2022/Subhasmita