

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2552 of 2022

Rajiv Mohanty

Petitioner

Mr. B.K. Swain, Advocate

-Versus-

S. Satish Kumar

....

Opposite Party

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
24.11.2022

Order
No.
01.

1. Heard learned counsel for the petitioner.
2. In the present case, the challenge is as to the order of cognizance dated 6th October, 2018 passed in ICC Case No.31 of 2018 pending in the file of learned S.D.J.M., Rayagada on the ground that for the dishonour of alleged cheque on account of 'stop payment' an intimation which has been received from Bank cannot be ground for initiation a proceeding under Section 138 NI Act and that apart, there has been no liability as such which is being claimed by the opposite party-complainant.
3. While claiming so, Mr. Swain refers to a copy of the complaint which is at Annexure-1 and the same is perused by the Court.
4. Admittedly, after the complaint was filed by the opposite party, the learned court below proceeded and finally took cognizance of the offence under Section 138 of the NI Act vide under Annexure-2.
5. In so far as the contention of Mr. Swain, learned counsel for the petitioner is concerned, whatever ground which has been raised at present, in considered opinion of the Court, shall have to be

examined by the court below during enquiry and trial along with the question of jurisdiction as also raised with regard to the sustainability of the complaint filing before the learned S.D.J.M., Rayagada. The Court is of the humble opinion that all such grounds as to whether the proceeding Section 138 of the NI Act can be sustained or not besides the question of jurisdiction and that apart, whether any liability stands against the petitioner or not shall have to be enquired into and adjudicated upon by the learned court below and on such disputed question of fact with regard to liability, the criminal proceeding cannot be quashed in exercise of inherent jurisdiction. Without expressing anything on merit on the challenge if on the ground of stop payment a proceeding under Section 138 NI Act can be maintained or not, the Court is of the final opinion that it shall be examined by the learned court below at the time of framing of charge and in that respect an may also be filed by the petitioner seeking his discharge.

6. Accordingly, it is ordered.

7. In the result, CRLMC stands disposed of with a liberty granted to the petitioner to raise all such grounds as available to him under law at the time of framing of charge in connection ICC Case No.31 of 2018 pending in the file of learned S.D.J.M., Rayagada and in the event, any such application so moved by him demanding discharge, the same shall be considered by the learned court below and pass appropriate orders thereon as per and in accordance with law.

8. Urgent certified copy of this order be granted as per rules.

(R.K. Pattanaik)
Judge