

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 501 of 2022

Nilanchal Badatya @ Badatiya ... *Petitioner*

Mr. A.K. Panda, Advocate

-Versus -

State of Odisha & Another *Opposite Parties*

*Mr. P.Tripathy,
Addl. Standing Counsel*

**CORAM:
JUSTICE SASHIKANTA MISHRA**

**ORDER
25.11.2022**

**Order No.
04.**

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned Additional Standing Counsel for the State.
3. The petitioner challenges the order dated 16.08.2022 passed by the learned J.M.F.C., Kabisuryanagar in I.C.C. Case No. 07 of 2021 whereby his application for discharge filed under Section 239 of the Cr.P.C. was rejected.
4. The brief facts, relevant only for deciding the present petition are that the present Opposite Party No.2 filed the above mentioned complaint in the learned Court below under Section-138 of N.I. Act. It is alleged that the petitioner purchased tiles amounting to Rs.2,65,000/- (Rupees Two Lakhs Sixty Five Thousand) from his shop and after much persuasion he paid the price thereof through a cheque on 20.02.2021 for the said amount. When the cheque was presented at the Bank, it was dishonoured on the ground of insufficient funds. The complainant thereafter issued legal

notice to the accused, which was replied and thereafter the complaint petition was filed. The petition for discharge was filed by the petitioner –accused mainly contending that the complaint petition does not reveal that the cheque was paid in payment of any legally enforceable debt.

It was further contended that the complaint petition contains several false averments relating to issuance and service of the legal notice.

5. Learned Court below considered the submissions and held that the contentions of the petitioner are to be considered only during trial and at the time of framing charge the Court is required to see only if a prima facie case is made out on the basis of materials produced by the complainant. Whether any cheque was issued in response to a legally enforceable debt or not, whether the cheque was validly dishonoured and all such matters would depend upon evidence adduced by the parties. At the time of framing of charge, the Court is required only to consider the materials produced by the complainant to see whether a prima facie case is made out against the accused. In other words, the Court is required to examine the materials on record in order to draw a presumptive opinion as regards commission of the alleged offence by the accused. It is not required at this stage to delve deep into the matter or to examine whether on the basis of the materials produced by the complainant, an order of conviction can be recorded or not.

5. In such view of the matter, this Court finds nothing wrong in the reasoning adopted by the learned Court below to reject the application for discharge so as to warrant any interference.

6. For the foregoing reason therefore, the CRLREV is found to be devoid of merit and is hence, dismissed.
7. Urgent certified copy of this order be granted as per rules.

Balaram

(Sashikanta Mishra)
Judge

