

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.545 of 2022

Hemalata Mohapatra

.... Petitioner
Mr. A.P.Bose, Advocate

-Versus-

Bijay Kumar Pradhani

.... Opposite party
Mr.S.K.Samantaray, Advocate

CORAM:
JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT:23.03.2023

1. Instant petition under Section 482 Cr.P.C. is filed by the petitioner for quashing of the impugned order dated 11th February, 2022 passed in Criminal Revision No. 49 of 2021 by the learned District & Sessions Judge, Puri confirming the order dated 22nd January, 2022 of the learned SDJM, Puri in I.C.C. Case No. 335 of 2020 and also the entire criminal proceeding on the grounds inter alia that the same is not maintainable and hence liable to be interfered with.

2. In so far as the proceeding in I.C.C. Case No. 335 of 2020 initiated by the opposite party is concerned, the same is with regard to dishonor of cheque and for commission of an offence under Section 138 of the N.I.Act by the petitioner and the challenge is confined to the defect in notice dated 6th November, 2020 on the ground that the same is not in conformity with law.

3. Heard Mr. Bose, learned counsel for the petitioner and Mr. Samantaray, learned counsel for the opposite party.

4. Three cheques were issued by the petitioner alleged to have been received by the opposite party for an amount of Rs.14,00,000/- and when they were presented before the Bank, all stood dishonored due to insufficiency in fund, whereafter, the opposite party served a legal notice dated 6th November, 2020 calling upon the former to pay the cheque amount and in case of legal action, to bear the entire cost of the proceeding, interest on the amount besides legal fee and since repayment was not obliged, the complaint under Section 138 of the N.I.Act was filed.

5. Mr. Bose, learned counsel for the petitioner submits that the notice under Annexure-3 dated 6th November, 2020 is invalid and not in accordance with law and therefore, it is nonest in the eye of law. Mr. Samantaray, learned counsel for the opposite party, on the other hand, submits that even if the petitioner has demanded the expenses of litigation etc. the impugned notice cannot be held as defective. Therefore, the learned courts below did not commit any error or mistake so also the impugned orders do not suffer from any legal infirmity and hence, deserve no interference.

6. Mr. Bose, learned counsel for the petitioner refers to the impugned notice dated 6th November, 2020 which indicates that the opposite party was called upon by the petitioner to pay the cheque amount of Rs.14,00,000/- within fifteen days from the date of receipt of the said notice failing which appropriate legal action would be taken and in that event, he would also be liable to pay the entire cost of the proceeding, interest over the amount besides legal fee for an amount of Rs. 3,000/-. A decision of the Apex Court in **Bijay Gopala Lohar Vrs. Panduram Ramachandra Ghorpade & Another** reported in **2019(I) OLR (SC) 1011** is cited at the bar which is to be effect that notice under Section 138 of the N.I.Act has to pay only in respect of the cheque amount and not

more and when the loan amount and the cheque amount are same, notice is not invalid due to non-mention of the cheque amount. Besides the above, one more decision of the Apex Court in **K.R. Indira Vrs. Dr. G.Adinarayana** decided on 9th October, 2003 in Appeal (Crl.) Case No. 1136 of 2003 is placed reliance on to satisfy the Court that the impugned notice has been issued to the petitioner for payment of the cheque amount and does not become defective with any such additional claim advanced with regard to the cost and the fee of the proceeding in case of a future legal action.

7. On a perusal of impugned notice dated 6th November, 2020, it is made to appear that the petitioner issued cheques on 20th, 25th and 30th July, 2020 for a total sum of Rs. 14,00,000/- against the security money refund as per the agreement dated 18th March, 2019 duly executed by him and when the same bounced back on account of funds insufficient and on receiving a memorandum from the concerned Bank dated 14th October, 2020, a demand was placed and he was called upon by the opposite party to pay the amount or else to face legal action and in such eventuality, to pay the cost of the proceeding besides other miscellaneous charges. It is not a case that the opposite party demanded an amount more than the cheque amount of Rs.14,00,000/-. Any such additional demand which is alleged by Mr. Bose, learned counsel for the petitioner relates to the cost of the proceeding with the interest on the total sum and other expenses and therefore, in the considered view of the Court, the impugned notice dated 6th November, 2020 cannot be said to be not in confirmity with law and according to the provisions of Section 138 of the N.I.Act. The aforesaid view of the Court receives support from the decisions (supra).

8. In **Bijaya Gopala Lohar** (supra), the Apex Court held that since the cheque amount and the loan amount is same so therefore the notice issued with demand for payment is in accordance with law. In **K.R. Indira** (supra), the Supreme Court referring to a decision in **Suman Sethi Vrs. Ajay K. Churiwal & Another (2000) 2 SCC 380** held and observed that if there is indication in the notice of any other amount covered by the cheque, it is not invalidated. In categorical term the Apex Court in the aforesaid decision concluded that when there was specific demand in respect of the amount of the cheque and the fact that certain additional claim incidental is made in the form of expenses incurred for clearance and charges, the notice is not vitiated. In any ways, in the case at hand, the impugned notice demands Rs.14,00,000/- which is not even the entire amount of loan said to have been advanced by the opposite party and that apart, in view of the settled legal position in **K.R. Indira** (supra), the irresistible conclusion is that the defect in notice cannot invalidate the proceeding when the demand is only for the cheque amount with additional claim towards the miscellaneous expenses and hence, the contention of the petitioner that the impugned order dated 11th February, 2022 of the learned revisional court suffered from infirmity is misconceived and thus, deserves to be outrightly rejected.

9. Accordingly it is ordered.

10. In the result, the CRLMC stands dismissed.

(R.K. Pattanaik)
Judge

Kabita