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**(2011) 06 OHC CK 0016**  
**In the Orissa High Court**  
**Case No : CrImc No. 1532 of 2010**

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|----------------------------------------------|------------|
| M/s. Vikash Metal and Power Ltd. and Another | APPELLANT  |
| Vs                                           |            |
| Mangalam Metals and Ores Limited             | RESPONDENT |

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**Date of Decision :** 29-06-2011

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202(2)  
Negotiable Instruments Act, 1881 (NI) — Section 138

**Citation :** (2011) 2 OLR 226

**Hon'ble Judges :** I. Mahanty, J

**Bench :** Single Bench

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## Judgement

1. Mahanty, J.—Heard Mr. B.C. Mohanty, learned counsel for the petitioners and Mr. L. Mishra, learned counsel for the Opp. party.

2. In this application u/s 482 Cr.P.C., the petitioners have sought to challenge the order dated 31.10.2009 passed in I.C.C. Case No. 26 of 2009, whereby, the learned J.M.F.C., Barbil has taken cognizance against them u/s 138 of the N.I. Act.

3. Mr. Mohanty, learned counsel for the petitioners submits that even in a proceeding under the N.I. Act, inquiry u/s 202 Cr.P.C. is mandatory. Learned counsel placed reliance on a judgment of this Court in the case of Parshotam Lal Vadera Vs. Satyanarayan Sadangi, and in particular, paragraph-15 thereof.

4. Mr. Mishra, learned counsel for the Opp. Party while not contesting the mandatory nature of the inquiry required to be undertaken u/s 202 Cr.P.C., submits that the nature of inquiry contemplated thereunder has been examined by the Delhi High Court in the case of Abhishek Agrawalla Vs. Boortmalt NV and Another, and in paragraphs-8 and 9 of the said judgment, it has been held as follows:

8. There are two kinds of cases which come before the Court, one where the offence is sought to be proved from documents and the oral testimony is given

before the Court to prove the documents by exhibiting the documents and by deposing as to when the documents were executed and by whom. The other kind of cases are where the case does not depend on documentary evidence and depends upon only the oral testimony. These are cases of physical hurt, injuries, threats etc. In order to protect an innocent person being summoned by the Magistrate on the basis of oral testimony of a person and considering that a large number of false complaints were being filed at far-off places just to harass the people, the Parliament had amended Section 202 so that the summoning orders were not issued mechanically by the Magistrates and whenever the accused was of other State an investigation or enquiry into the allegations was mandatorily conducted either by the Magistrate himself or through police. Say for example, a person files a complaint that on telephone he had been threatened by a person seeking ransom or he had been threatened to be killed and the person who allegedly threatened him was living outside the jurisdiction of the Court. Before acting on this oral statement of the victim, it would be incumbent upon the Court to make an enquiry about the call details, about the telephone and about telephone number from which the threat was allegedly received and the telephone number of the complainant. The call details for period around the date of incident would show if the calls had been made frequently or it was a solitary call and the Magistrate can also make enquiry about the person in whose name the telephone was standing. This would enable the Magistrate to find out if there was credibility in the statement given by the complainant. The Magistrate can summon the officials of service provider telephone company and make this enquiry himself. Similarly there may be a case where a person alleges that while he was at X place, Y a resident of other State had come there and beaten him or abused him or threatened him or caused injuries to him etc. The person produces his MLC and makes an oral statement. The Court in such a case, if the accused is of outside his jurisdictional area, would have to get an enquiry made through police if the accused was living at the address given and if the accused had visited the place where it was alleged that he had beaten or threatened. The Magistrate can also get a fact finding enquiry done from police of that State or police of his own State. However, where the commission of offence is disclosed only from the documents, no further enquiry except scrutinizing the documents proved before the Court by testimony of complainant is feasible, I consider that the enquiry envisaged u/s 202 Cr.P.C. in such cases in an enquiry by way of recording statement of complainant and careful scrutiny of documents relied upon by the complainant. Say, if a case against the accused is filed u/s 138 of Negotiable Instruments Act and the accused lives in Noida while the complainant lives in Delhi. The Magistrate in such a case has only to consider if prima facie offence was committed or not and if it has jurisdiction based on the documents i.e. whether the cheque was dishonoured, whether the proper demand notice was sent and still payment was not made etc. Similarly there are several statutes where the offence is of technical nature and the commission of offence can be made out from the documents, say the offences under the Companies Act, against the directors of the company for violating the mandatory provisions

regarding filing of returns etc. the company may be registered in Delhi but the director may be living in Noida or Gurgaon. In such a case, the commission of offence has to be inferred only from the documents and the enquiry u/s 202 Cr.P.C. has to be limited to scrutiny of the documents and recording of statement of the complainant and cannot go beyond that.

9. What is the important of provision of Section 202 Cr.P.C. can be seen from the decision of the Supreme Court in *Rosy and Another Vs. State of Kerala and Others*, . In this case another provisions of Sub-Section 202, which is also couched in mandatory language had come into question i.e. Section 202(2) proviso. This proviso provides that where the offence was triable by the Court of Sessions, the Magistrate shall call upon the complainant to produce all his witnesses and examine them on oath. The proviso is couched in mandatory words and the mandate is "He shall call upon the complainant to produce all his witnesses and examine them on oath". The Supreme Court in this case observed that the issue of complying with proviso to Sub-Section 2 of Section 202 Cr.P.C. would arise only in cases where the Magistrate before taking cognizance of the case, decides to hold enquiry and after enquiry if he decides to take the evidence of witnesses on oath. The object and purpose of holding an enquiry or investigation u/s 202 Cr.P.C. is to find out whether there was sufficient ground for proceeding against the accused or not and that holding enquiry or investigation is not an mandatory course before issue of process against the accused or dismissal of the complaint. It is an enabling provision to form an opinion as to whether or not process should be issued and to remove from his mind any hesitation that he may have fallen upon on mere perusal of the complaint and consideration of complainant's evidence on oath.

5. On perusal of the order sheet provided by the petitioners under Annexure-8, it appears from the order dated 20.10.09 that the initial statement of the complainant was recorded u/s 200 Cr.P.C. and a memo was filed by the complainant not to examine any other witness u/s 202 Cr.P.C. inquiry and accordingly, the matter was adjourned to 31.10.2009 for taking cognizance.

6. By the order dated 31.10.2009, the learned Magistrate upon perusing the case record as well as the documents filed by the complainant and the initial statement of the complainant, came to hold that while no case is made out for issue of notice against the accused Nos. 3 and 4, but came to hold that process be issued against accused Nos. 1 and 2 i.e. M/s. Vikash Metal & Power Ltd. through its Director and Shri Akash Patni, who has signed the Cheque which has been dishonoured and is the subject matter of the complaint.

7. Considering the facts of the case, while there can be no doubt that an inquiry u/s 202 Cr.P.C. is mandatory, but the nature of such inquire is only to consider if any prima facie offence has been committed or not and if it has jurisdiction based on the documents i.e. whether the cheque was dishonoured, whether the proper demand notice was sent and still payment was not made etc. In this respect, the Hon''ble Delhi High Court came to hold that the object and purpose

of holding an inquiry or investigation u/s 202 Cr.P.C. is to find out whether there was sufficient ground for proceeding against the accused or not and the inquiry in such circumstances has to be limited to scrutiny of the documents filed before the Court, since an offence u/s 138 of the N.I. Act is to be established essentially through documentary evidence.

8. In the present case, the learned Magistrate has dealt with the facts of the case in detail and I find no justifiable ground whatsoever to interfere with the impugned order of cognizance.

9. In so far as the order dated 2.4.2010 directing issue of N.B.W. (A) is concerned, this CRLMC is disposed of with a direction that if the petitioner appears before the learned J.M.F.C., Barbil in ICC Case No. 26 of 2009 within a period of four weeks from today and on his appearance, the NBW issued against the petitioner shall be recalled. The N.B.W. may not be executed for a period of four weeks from today. The trial Court is also directed to expedite disposal of the complaint case.

10. Urgent certified copy of this order be granted on proper application.