

(2018) 01 OHC CK 0016
In the Orissa High Court
Case No : 2536 of 2006

Purusottam Prusty

APPELLANT

Vs

State of Orissa & another

RESPONDENT

Date of Decision : 02-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Negotiable Instruments Act, 1881](#), [Section 138](#), [Section 145\(1\)](#)

Citation : (2018) 01 OHC CK 0016

Hon'ble Judges : S.K. Sahoo

Bench : Single Bench

Advocate : Pravat Kumar Panda, Prem Kumar Patnaik

Final Decision : Allowed

Judgement

1. This is an application under section 482 of Cr.P.C. filed by the petitioner Purusottam Prusty challenging the impugned order dated 04.07.2006

passed by the learned S.D.J.M., Dhenkanal in I.C.C. Case No.120 of 2006/C.T. Case No.1540 of 2006 in taking cognizance of the offence

under section 138 of the Negotiable Instruments Act, 1881 (hereafter "N.I. Act") and issuance of process against him.

2. The opp. party no.2 Dinesh Patnaik filed a complaint petition in the Court of learned S.D.J.M., Dhenkanal alleging commission of offence under

section 138 of the N.I. Act against the petitioner. In paragraph-9 of the complaint petition, it is mentioned as follows:-

9. List of documents filed:-

(i) Post dated cheque bearing No. 140404, dt. 15.12.2005.

- (ii) Deposit slip.
- (iii) Intimation slip of U.B.I., Dhenkanal to S.B.I., Evening Branch, Dhenkanal.
- (iv) Letter of S.B.I., Dhenkanal, Evening Branch to the complainant.
- (v) Pleader Notice through Regd. Post.
- (vi) Receipt of Regd. A.D.
- (vii) Acknowledgment duly received by the accused.
- (viii) Any other found relevant at the time of hearing.

3. The complainant filed the affidavit in chief as provided under section 145(1) of the N.I. Act. The learned Magistrate vide impugned order dated

04.07.2006 has been pleased to hold that no document has been filed by the complainant though the same has been mentioned in the affidavit.

However, the learned Magistrate found sufficient prima facie materials to issue process against the petitioner for commission of offence under

section 138 of the N.I. Act.

4. In spite of valid service of notice on opp. party no.2- complainant, none appears on his behalf.

5. On perusal of the lower court record which was called for by this Court, it appears that not a single document which is mentioned in paragraph-

9 of the complaint petition has been filed.

6. Learned counsel for the petitioner, Mr. Pravat Kumar Panda contended that a case under section 138 of the N.I. Act is mainly based on

documentary evidence and when the complainant has mentioned regarding some documents in the complaint petition on the basis of which he

alleged commission of offence by the petitioner but he has not filed the same, the learned Magistrate without perusing any such documents was not

justified in coming to hold that sufficient prima facie materials to issue process against the petitioner regarding the commission of offence under

section 138 of the N.I. Act is made out and therefore, the impugned order should be quashed.

7. It is not in dispute that the case of the complainant is mainly based on the documentary evidence which is mentioned in paragraph 9 of the

complaint petition. It is also not in dispute that those documents were not brought to the notice of the Court at the time of passing the impugned

order. In a case of this nature, the Court is required to go through the documents

to come to a prima facie opinion regarding commission of offence as well as issuance of process.

8. Thus I am of the view that the learned Magistrate should not have passed the impugned order hastily without verifying any such documents.

Mere mentioning the documents on the body of the complaint petition is not enough, in fact those documents were required to be brought on

record in accordance with law even at the stage of taking of cognizance and issuance of process. The learned Magistrate after perusal of the

documents could have come to a prima facie opinion regarding the fulfillment of the ingredients of offence under section 138 of the N.I. Act.

9. Therefore, I find sufficient force in the contention of the learned counsel for the petitioner. Accordingly, the impugned order dated 04.07.2006

stands quashed.

10. The CRLMC application is allowed.