
(2005) 04 OHC CK 0008
In the Orissa High Court
Case No : CRLMC No. 269 of 2005

Sri Dillip Kumar Jena

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 12-04-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2005) 04 OHC CK 0008

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Advocate : Sujata Dash, Pattanaik and M.K. Panda, for the Appellant; N. Lenka, P.K. Tripathy, A. Parida and P.R. Bera for Opp. Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Parichha, J.—Though this matter has been listed for admission, on the consent of the learned Counsel for the parties the same is taken up for final disposal.

2. Basing on a complaint lodged by opposite party No. 2, vide ICC No. 99 of 2004, the learned S.D.J.M., Baripada took cognizance of the offence u/s 138 of the Negotiable Instruments Act against the Petitioner and directed issue of process. Then at a later stage, the learned SDJM, Baripada by order dated 21.8.2004 directed issue of N.B.W. against the Petitioner. Aggrieved, the Petitioner has come up with the present application u/s 482, Code of Criminal Procedure with a prayer to quash the said order of cognizance and the order directing issue of N.B.W. against the Petitioner.

3. Dr. S. Dash, learned Counsel appearing for the Petitioner submits that the ingredients of the offence u/s 138 of the Negotiable Instrument Act is wanting in the complaint petition and the documents filed by the complainant, cognizance u/s 138 of the said Act could not have been taken. It is also submitted that the allegations being highly improbable, the learned SDJM should have dismissed the

complaint at the threshold. According to her, taking of cognizance and issuing N.B.W. was against the materials on record and the settled norms of law.

4. Mr. N. Lenka, learned Counsel for the opposite party No. 2 on the other hand, submits that all the ingredients of the offence u/s 138 of the N.I. Act are available in the complaint petition and the materials produced by the complainant and therefore, taking of cognizance for the aforesaid offence was legal and proper. He further submits that when the Petitioner failed to appear in the Court in response to the process issued, there was no alternative for the Court than to direct issue of N.B.W. against the Petitioner for his production.

5. Whether the allegations made in the complaint case and the materials produced by the complainant opp.party No. 2 are sufficient to establish the offence u/s 138 of the N.I. Act, is a matter to be decided at the stage of trial. At the stage of cognizance all that the Court is to find out, is whether there is existence of prima facie case for the alleged offence. In the present case, the copy of the cheque in question, the notice and the report of the bank are available. Whether those documents are reliable and acceptable and can form the basis for conviction, will be decided at a later stage. Since there are allegations in the complaint petition and materials are there to support the allegations noted therein, a prima facie case for the alleged offence is there and so, the impugned order of cognizance cannot be termed as illegal.

6. Dr. Dash submits that the Petitioner is willing to participate in the proceeding to prove his innocence and he may be given an opportunity to appear in the Court and go on bail.

7. Considering the aforesaid submission and the fact that both the Petitioner and opposite party No. 2 are relative to each other, I direct that on the Petitioner surrendering before the learned SDJM., Baripada in the aforesaid complaint case by the end of this months and moving for bail, he shall be released on bail with appropriate terms and conditions. The Trial Court shall take up the trial in an expeditious manner and dispose of the case early.

With the aforesaid observation and direction, the CRLMC is disposed of.

UCC be granted on proper application.