THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1265 of 2022
CRLMC No.1266 of 2022
&
CRLMC No.1267 of 2022

CNR Nos. ODHC01-030101-2022/ ODHC01-030106-2022/ ODHC01-030114-2022

(In the matter of applications under Section 482 of the Criminal Procedure Code, 1973)

CRLMC No.1265 of 2022

M/s. Raas Processors Pvt. Ltd. and another ……. Petitioners
-Versus-

State of Odisha and another ……. Opp. Parties

For the Petitioners : Mr. S.K. Baral, Advocate
For the Opposite Party No.1 : Mr. Jateswar Nayak, AGA
For the Opposite Party No.2 : Mr. Amit Prasad Bose, Advocate

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For the Petitioners : Mr. S.K. Baral, Advocate
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For the Opposite Party No.2 : Mr. Amit Prasad Bose, Advocate

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 29.07.2026 :: Date of Judgment: 25.08.2026

S.S. Mishra, J. The aforementioned Criminal Miscellaneous Cases arise out of the common proceedings in I.C.C. Case Nos.14 of 2021, 15 of 2021 and 17 of 2021 pending before the learned S.D.J.M., Champua, whereby cognizance has been taken against the respective petitioners for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. Heard Mr. S.K. Baral, learned counsel appearing for the petitioners, Mr. Jateswar Nayak, learned Additional Government

Advocate for the State-opposite party No.1 and Mr. Amit Prasad Bose, learned counsel for the opposite party No.2.

3. The case of the petitioners, as borne out from records, is that petitioner No.1, M/s. Raas Processors Pvt. Ltd., is a private limited company represented through its Managing Director, petitioner No.2, Sri Raj Kumar Kashyap. The company had taken on lease a crusher unit belonging to Sri Dhiren Kumar Das, father of Opposite Party No.2, situated near Champua, Keonjhar, for carrying on its business operations. According to the petitioners, the crusher unit was managed on their behalf by one Gopal Krishna Biswal, who was employed as the Odisha Head and Manager of the company and was entrusted with the responsibility of looking after the day-to-day affairs of the crusher unit, including financial transactions, operation of bank accounts and custody of signed blank cheques issued by the company.

4. It is the specific case of the petitioners that after execution of the lease agreement, the crusher unit could not be effectively operated due to non-supply of electricity. During the course of business, Gopal Krishna Biswal, taking advantage of the confidence reposed on him by the

management, allegedly mismanaged the affairs of the company and caused substantial financial loss. It is alleged that he withdrew money from the company's bank accounts through ATM cards, retained signed blank cheques and other confidential documents of the company and failed to maintain proper accounts. Upon the petitioners losing confidence in his functioning, he was directed to hand over all company records, ATM cards, signed blank cheques and other documents. However, instead of complying with the said direction, he allegedly retained the same and started misusing the company's documents. The petitioners claim that they were constrained to issue legal notices against him and also lodged an F.I.R. complaining about his conduct.

5. The petitioners further assert that while matters stood thus, Sri Dhiren Kumar Das, the owner of the crusher unit and father of Opposite Party No.2, instituted Civil Suit No.34 of 2020 before the learned Civil Judge (Senior Division), Champua seeking damages, realization of rent and other alleged outstanding dues against the petitioners arising out of the lease transaction. The petitioners entered appearance in the said civil suit and contested the claim. According to them, the institution of the

civil suit clearly establishes that the dispute between the parties is fundamentally contractual and civil in nature, relating to alleged liabilities under the lease arrangement.

6. The petitioners contend that during the pendency of the aforesaid civil suit, they were served with summons in three separate complaint cases, namely I.C.C. Case Nos.14, 15 and 17 of 2021, instituted under Section 138 of the Negotiable Instruments Act before the learned S.D.J.M., Champua. The complaint cases relate to three different cheques allegedly issued by petitioner No.2 on behalf of petitioner No.1 towards discharge of different liabilities.

7. The petitioners have, however, categorically denied the allegations made in all the three complaint cases. It is their specific stand that they never issued the aforesaid cheques to the respective complainants towards discharge of any legally enforceable debt or liability. According to them, the signed blank cheques had remained in the custody of their former Manager, Gopal Krishna Biswal, who, in collusion with the complainants and other interested persons, fraudulently utilized the same after retaining them without authority. The petitioners further contend

that none of the complainants had any independent legally enforceable claim against them and that the complaint proceedings have been instituted with an oblique motive to pressurize them in relation to the disputes arising out of the lease transaction.

8. The petitioners also rely upon the pendency of Civil Suit No.34 of 2020 to contend that the issues relating to lease rent, damages and other financial liabilities are already the subject matter of adjudication before the competent Civil Court. According to them, initiation of three separate criminal prosecutions under Section 138 of the Negotiable Instruments Act during the pendency of the civil proceedings amounts to abuse of the process of law, particularly when the alleged cheques themselves are stated to have been misused after being retained by the former Manager of the company.

9. Being aggrieved by the continuation of the complaint proceedings in I.C.C. Case Nos.14, 15 and 17 of 2021, the petitioners have invoked the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, praying for quashing of the said criminal proceedings on the ground that the prosecutions are vexatious, malicious,



founded upon suppression of material facts and constitute an abuse of the process of the Court.

10. The complaint cases were initiated by the opposite party against the petitioners in the year 2021 and in the year 2022, the present set of petitions have been filed seeking quashing of the entire proceeding. Vide separate orders dated 05.09.2022, the Coordinate Bench of this Court has passed interim orders staying the proceeding of the complaint cases.

11. It is primarily contended by learned counsel for the petitioners that the disputes between the parties are purely civil in nature and civil suits are pending in that regard. The civil suit proceedings have been initiated by the complainant/opposite party no.2. Therefore, the complaint cases subsequently filed by the opposite party no.2 are an attempt to arm twists the petitioners and purely abuse of process of law.

12. Perusal of the complaint cases and the related documents filed by the complainant/opposite party no.2 to substantiate its case for commission of offence under section 138 of N.I. Act reveal that ingredients of the offence under section 138 of NI Act stand satisfied on

the facts of the present cases. Prior to initiation of the complaint cases, notice under section 138 (b) of NI Act were also served upon the present petitioners. The petitioners have raised the plea of misuse of cheques and registration of FIR against their own manager while replying to the notice. Para-7 of the complaint case is relevant to be reproduced:-

> *"7. That, though the accused have received the legal notices on 08.02.2021 at New Delhi and on 11.02.2021 at Noida, they took absolutely no step for repayment of the cheque amount rather preferred to keep silent. It is pertinent here to mention that on 02.03.2021, the accused no.2, having ulterior motive in order to fish out a defence in future, sent a reply to the demand notice through his lawyer dated 25.02.2021, which was received by the complainant's lawyer on 03.03.2021. The accused by their overt act, have committed offence u/Sec.138 of Negotiable Instrument Act, 1881 and are liable to be prosecuted thereunder."*

13. Since a defence is set forth by the petitioners in the complaint against them under section 138 of the NI Act, the onus lies on the petitioners to prove their defence by undertaking the rigors of the trial. However, by invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C. the petitioners are seeking interference of this Court to examine the probable defence put forth by them. Jurisdictionally, this Court is barred from conducting a mini trial to examine the probative

value of the evidence relied upon by the petitioners in support of their defence. The jurisdiction of this Court under Section 482 Cr.P.C. is circumscribed to be exercised in cases where there is abuse of process of law. The contention raised by the petitioners, if proved, may be a case of abuse of process of law, but that could be only tested in the trial. The delay and prolongation of the proceeding under section 138 of the NI Act at the instance of the accused persons on hyper technical ground have been severely condemned by the Hon'ble Supreme Court in the recent judgment in the case of ***Sanjabij Tari vs Kishore S. Borcar & anr.,*** reported in ***2025 LiveLaw (SC) 952,*** observing thus:

> *"36. Keeping in view the massive backlog of cheque bouncing cases and the fact that service of summons on the accused in a complaint filed under Section 138 of the NI Act continues to be one of the main reasons for the delay in disposal of the complaints as well as the fact that punishment under the NI Act is not a means of seeking retribution but is more a means to ensure payment of money and to promote credibility of cheques as a trustworthy substitute for cash payment, this Court issues the following directions:-*
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> *A. In all cases filed under Section 138 of the NI Act, service of summons shall not be confined through prescribed usual modes but shall also be issued dasti i.e. summons shall be served upon the accused by the complainant in addition. This direction is necessary as a large number of Section 138 cases under the NI Act are filed in the metropolitan cities by financial institutions, by virtue of Section 142(2) of the NI*

Act, against accused who may not be necessarily residing within the territorial jurisdiction of the Court where the complaint has been filed. The Trial Courts shall further resort to service of summons by electronic means in terms of the applicable Notifications/Rules, if any, framed under subSections 1 and 2 of Section 64 and under Clause (i) of Section 530 and other provisions of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS, 2023') like Delhi BNSS (Service of Summons and Warrants) Rules, 2025. For this purpose, the complainant shall, at the time of filing the complaint, provide the requisite particulars including e-mail address, mobile number and/or WhatsApp number/messaging application details of the accused, duly supported by an affidavit verifying that the said particulars pertain to the accused/respondent."

14. Since this is a case where the petitioners have put forth a possible defence to be discharged by them to get out of the liability under Section 138 of the NI Act, they should face the trial and prove their case by adducing adequate evidence on record. Therefore, this Court is not inclined to give indulgence to the petitioners and scuttle the trial at this stage by invoking its jurisdiction under Section 482 Cr.P.C.

15. Accordingly, the CRLMCs are dismissed.

(S.S. Mishra)
Judge

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