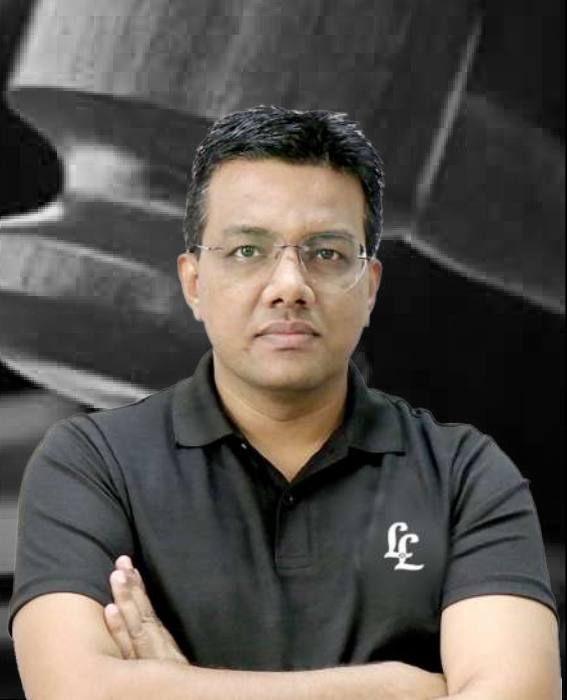
सीनियर के कहने पर LEGAL NOTICE भेजना पड़ा भारी!!!



Official Judgment

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3396 of 2025
CNR No-ODHC010597062025

(In the matter of an application under Section 482 of the Code of Criminal Procedure corresponding to Section 528 of the Bharatiya Nagarik Surakshya Sanhita (BNSS), 2023)

Bijayananda Panda	**....**	***Petitioner(s)***
	-versus-	
State of Odisha & Ors.	**....**	***Opposite Party (s)***

Advocates appeared in the case through Hybrid Mode**:**

For Petitioner(s)	:	*Mr. Lalit KumarMaharana, Adv.*
For Opposite Party(s)	:	*Ms. Gayatri Patra, ASC* *(None appears for O.P.2 despite sufficiency of notice)*

CORAM:
DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-13.07.2026
DATE OF JUDGMENT:-21.08.2026

Dr. Sanjeeb K Panigrahi, J.

1. The Petitioner, in the present CRLMC, seeks to quash proceeding arising out of Narla P.S. Case No.83 of 2016 corresponding to C.T. Case No.173 of 2016 pending in the court of the learned J.M.F.C., M. Rampur, Kalahandi for commission of offences punishable under Sections 420, 265, 406, 120B of the I.P.C., 1860 read with Section 19 of the Orissa Money Lenders Act, 1939 and Section 4 of the Prevention of Money Laundering Act (PMLA), 2002.

I. FACTUAL MATRIX OF THE CASE:

Junior

2. The brief fact of the case, in nutshell, is that the Petitioner is an Advocate. He was enrolled with the State Bar Council in 2004. He started his practice under the guidance of Haramohan Pattnaik, Senior Advocate in the field of Taxation. He had joined in the Chamber of Mr. Haramohan Pattnaik in 2004. He had left the Chamber in 2005 owing to the death of his father. For the purpose of maintaining his livelihood, he started his own practice in Tax Return Filings, Registration etc.

3. Be that as it may, in January, 2016, the Petitioner had visited the Chamber of Mr. Haramohan Pattnaik to take his advice on a taxation issue. During such visit, he was instructed by his learned Senior to send Legal Notices to some of the persons on behalf of one of his clients, named, Bidhu Bhusann Naik under Section 138 of the Negotiable Instruments Act, 1881. The contents of the Legal Notice was drafted by his learned Senior and forwarded to the Petitioner through email dated 24/01/2016. The instruction for the Petitioner was to print out the same on his Letter Head and handover to the Office Clerk for dispatching. Accordingly, the Petitioner followed the instruction of his learned Senior and the Legal Notices were dispatched to the Noticee. On receipt of the aforesaid notice, the complainant filed the aforesaid case.

4. Apprehending arrest, the Petitioner had approached this Court in ABLAPL No.7900 of 2017 which was disposed of on 27/08/2018 thereby protecting the Petitioner from arrest in connection with the said proceeding.

Anticipatory Bail Granted

5. In the meantime, the investigation proceeded further and Final Form has already been submitted in 2016 wherein, a *prima facie* case seems to have been made out against Karunakar Samal for the offences under Sections 420, 465, 406, 120(B) of the IPC read with Section 19 of Money Lenders Act, along with Section 4 of Prevention of Money Laundering Act, 2002 keeping the investigation open under Section 173(8) of CrPC for the arrest of other three accused persons involved in the case. Subsequently, in 2019 i.e. after a span of three years, charge-sheet was submitted against other three accused persons. However, the Petitioner has been implicated for the aforementioned offences without any incrementing material against him whatsoever.

Local Money Lender

6. Being aggrieved, the Petitioner has preferred the present CRLMC.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

7. Learned counsel for the Petitioner Mr. Lalit Kumar Maharana, earnestly made the following submissions in support of his contentions:

i) The complainant named Narendra Budhia lodged a written complaint dated 17/05/2016 alleging that he had received some legal notices from Sri Haramohan Pattnaik, Advocate and Bijayananda Panda, Advocate, acting on behalf of Sri Bidhu Bhusan Naik of Bhubaneswar, claiming huge amounts of money on vexatious grounds. On further inquiry, the complainant came to know that Bidhu Bhusan Naik had issued those notices at the instance of another person named Karunakar Samal, a local moneylender.

ii) The complainant alleged that Karunakar Samal had lent money and in return kept blank cheques signed by them. However, even after repayment, Karunakar Samal did not return the blank cheques. The Complaint disclosed civil dispute between him and Karunakar Samal involving money transaction, but nowhere any allegation leveled against the Petitioner.

Repayment के बाद भी चेक नहीं लोटाए

iii) The I.O after thorough investigation submitted the Final Form. There is no iota of material against the present Petitioner. No specific material whatsoever has come out against the Petitioner apart from the legal notices which he has issued on behalf of his client, still, the I.O., for no reason, stated that prima facie evidence is well established against the Petitioner.

iv) There is no material whatsoever against the Petitioner, named, Bijayananda Panda, Advocate, which would bring home the charges under Sections 420, 465, 406, 120B of the I.P.C. read with Section 19 of the Money Lenders Act, 1939, read with Section 4 of the Prevention of Money Laundering Act, 2002.

v) Petitioner is an Advocate. He received his license to practice in 2004. He was practicing under his Senior, Mr. Haramohan Pattnaik, Advocate for a brief period and then started his independent practice.

vi) In January 2016, his senior Mr. Pattnaik instructed the Petitioner to send legal notices under Section 138 of the N.I. Act, 1881. The draft notices in MS Word format were sent to the Petitioner by his Senior through email dated 24/01/2026. The Petitioner took print out in his letter head and sent to the assigned address through office clerk. Basically, a Junior Lawyer carried out the instruction of his Senior, in sending Legal Notices on behalf of a client. "जूनियर वकील ,अपने सीनियर की बात मानता है "

vii) The Hon'ble Supreme Court as well as the Hon'ble High Courts over a period of three decade has created a fine balance between what constitutes "abuse of the process of law" contrasted with the core objectives of Section 482 i.e. to exercise the discretion contained therein in favour of the accused when it is a matter of ensuring that justice prevails and a prima facie reading of the facts and circumstances of the given case does not tantamount to a cognizable offence against the accused.

viii) It has been observed in catena of decisions that the powers of the Courts and police are not overlapping but complementary therefore, the exercise of the powers under Section 482 cannot vitiate an investigation or trial at the inception itself. At the same time, Section 482, it proves to be a valuable safeguard in cases where the rigors of a criminal trial could potentially destroy the life of an innocent individual whose innocence bespeaks itself on the very face of the FIR.

ix) Such being the case, a criminal proceeding can be quashed if:

i. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

ii. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the Accused.

iii. When continuing legal proceedings results in injustice, harassment, or a waste of the court's time, it is deemed an abuse of the process of law. Courts are vested with inherent powers to quash such proceedings to prevent manifest injustice and secure the ends of justice.

x) Whether a Lawyer acting on behalf of his client, especially while sending a Legal Notice under Section 138 of the N.I. Act, 1881 is liable to be prosecuted for the wrongs if any, done by his client?

i. The High Court of Madras in the case of ***ML Ganesh vs. CA Venkata Siva Kumar***[1] has categorically held that *"a lawyer is an advocate, one who speaks for another. Naturally, beyond what his client tells him the lawyer has no opportunity to test the truth or falsity of the story put forward by the client"*.

ii. The High Court of Bombay, Nagpur Bench in the case of ***Shri Nemchand -versus- Vipinkumar***[2] has categorically held

[1]in Crl.OP Nos. 4669 & 5115 of 2020

[2]in Criminal Application in (APL) No.1538 of 2022

that *"an advocate, who is acting on an instruction of his client cannot be made to face prosecution in a casual and routine manner. There must be strong material to prima facie establish the malic or previous ill feeling between the parties"*.

iii. Recently, the High Court of Madaras in the case of ***J.N. Naresh Kumar –Vrs.- Radhika Dolia***[3] while dealing with an application under Section 482 of CrPC has quashed the proceeding qua the Lawyer who was falsely implicated for acting on behalf of his client while holding that "*a lawyer is an advocate, who speaks on behalf of another. Naturally beyond the instructions given by the client, a lawyer has no opportunity to verify the truth or falsity of the facts narrated by the client. Therefore, no lawyer can be prosecuted for defamation in respect of any statements made on the basis of instruction given by the client. It is the duty of the lawyer to decide whether he can properly act upon such instructions, and whatever responsibility may arise from acting upon those instructions would rest with the client and not with the lawyer. Any contrary view would be opposed to the settled trend of judicial decisions defining the scope and extent of the privilege conferred upon a lawyer. Hence, the entire complaint is nothing but a clear abuse of process of law insofaras the Advocate, who appeared on behalf of the first and second accused, is concerned*".

[3] inCrl.R.C.No. 8047 of 2022

xi) Such being the position of law, the facts of the case coupled with the aforementioned position of law would compel the Petitioner to urge the following factual arguments to substantiate his case:

xii) The charges against the Petitioner are under Sections 420, 465, 406, 120B of the I.P.C. read with Section 19 of the Money Lenders Act, 1939, read with Section 4 of the Prevention of Money Laundering Act, 2002.

xiii) The allegation against the Petitioner in the FIR is that some legal notices from Sri Haramohan Pattnaik, Advocate and Bijayananda Panda, Advocate, acting on behalf of Sri Bidhu Bhusan Naik of Bhubaneswar.

xiv) Section 19 of the Money Lenders Act, 1939 deals with any person who lends money, takes interest, receives advances without any license or permission shall be held punishable.There is no such allegation against the Petitioner.

xv) Section 4 of the Prevention of Money Laundering Act, 2002 says whosoever commits the offence of 'money-laundering' shall be held liable.There is no such allegations against the Petitioner regarding anything to do with any process or activity connected with the proceeds of crime and projecting it as untainted property.

xvi) Section 420 deals with cheating, Section 465 deals with forgery, Section 406 deals with criminal breach of trust. There is no allegations against the present Petitioner regarding cheating, forgery or criminal breach of trust. Whatever allegations are made, those may have been made against his client.

xvii) Apart from the Legal Notices, nothing has been seized from the Petitioner, which was confined to Section 138 of the N.I. Act, 1881. For that purpose, the cheques were received by the Petitioner's client, for what purpose the client had paid the money to the Complainant and/or kept cheques as alleged, is not the domain of the Petitioner, Advocate. Therefore, if the Petitioner for having acting on behalf of his client is allowed to be prosecuted in the present matter, that would amount to abusing the process of law.

xviii) The core allegations are directed against the alleged money lender, named, Karunakar Samal. Noincriminating material has been collected during investigation to establish any criminal intention, conspiracy or active participation on the part of the Petitioner.

xix) It is further submitted that despite lapse of several years and continuation of investigation under Section 173(8) Cr.P.C., no material could be unearthed against the Petitioner. Nevertheless, charge-sheet came to be submitted against him mechanically and without any legally sustainable basis.

xx) The continuation of the criminal proceeding against the Petitioner amounts to abuse of the process of Court. An Advocate acting on behalf of a client and issuing legal notices in discharge of professional duties cannot be subjected to criminal prosecution in absence of any material showing active complicity or criminal intent.

xxi) In the facts and circumstances of the case, the present proceeding, insofar as the Petitioner is concerned, deserves to be quashed in exercise of inherent jurisdiction of this Court under Section 482 Cr.P.C. in order to secure the ends of justice and prevent abuse of the process of Court.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES/ STATE:

8. On the contrary, the Learned Counsel for the Opposite Parties/ State Ms. Gayatri Patra, ASC made the following submissions in support of her contentions:

(i) It is submitted that during investigation, the complainant and other witnesses examined under Section 161 Cr.P.C. allegedly stated that they had obtained loans from accused Karunakar Samal by handing over blank signed cheques and documents as security, which were not returned despite repayment of the loan amount along with substantialinterest.

क्लाइंट और वकील आपस मे मिले हुए है !!

(ii) Further investigation allegedly revealed that accused persons named Karunakar Samal, Haramohan Pattanaik, Bijayananda Panda and Bidhu Bhusan Naik were well acquainted with each other and had financial dealings inter se, including transactions relating to establishment of a farm for which accused

KarunakarSamal had allegedly received Rs.25,00,000/- from Bidhu Bhusan Naik.

(iii) In furtherance of the alleged conspiracy, legal notices were issued through Advocates Haramohan Pattanaik and Bijayananda Panda falsely portraying that the complainants had entered into agreements with Bidhu Bhusan Naik for sale of land and supply of construction material, though according to the prosecution case, the complainants were poor farmers having no prior acquaintance with Bidhu Bhusan Naik.

(iv) The accused Karunakar NSamal was allegedly carrying on unlicensed money lending activities in contravention of the Orissa Money Lenders Act by advancing loans to villagers on exorbitant interest and misusing blank signed cheques and documents with dishonest intention to extort money from them.

(v) Investigating Officer seized the legal notices issued by Advocates Haramohan Pattanaik and Bijayananda Panda in favour of Bidhu Bhusan Naik from the complainant and other witnesses; accused Karunakar Samal was arrested on 18.05.2016 and forwarded to the learned Court on the same day, while accused [Sr. ADV] Haramohan Pattanaik and Bidhu Bhusan Naik subsequently surrendered before the learned District and Sessions Judge, Khurda , whereas the present petitioner named Bijayananda Panda was protected from arrest pursuant to the order passed by this Court in ABLAPL No.7900 of 2017.

(vi) It is further pertinent that despite valid service of notice, the complainantopposite party has remained absent before this Court resulting in the matter proceeding ex parte against him vide order dated 15.05.2026, which prima facie reflects lack of prosecutorial interest on the part of the complainants.

(vii) Moreover, it is equally relevant to note that the genesis of the dispute substantially arises out of alleged private monetary transactions between the complainants and accused Karunakar Samal. The complainants themselves are the principal interested parties in the matter and the Slate has no independent monetary interest in the dispute.

(viii) In view of the prima facie materials collected during investigation and the charge-sheet submitted thereon, the disputed questions relating to the petitioner's knowledge, intention and alleged participation in the conspiracy require appreciation of evidence during trial and therefore cannot be conclusively adjudicated in proceedings under Section 482 Cr.P.C. at the threshold stage.

(ix) Reliance has been placed in ***G Sagar Suri &Anr. v. State of U.P. &Ors.***[4], the Supreme Court held: *"in exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence' criminal proceedings are not a short cut of other*

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[4](2000) 2 SCC 636

remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution".

(x) Further, in ***Indian Oil Corporation –vrs.- NEPC India Ltd.***[5], the Hon'ble Supreme Court observed: *"While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged".*

(xi) In such view of the matter, it is contended that prayer made by the Petitioner may be dismissed.

IV. THIS COURT'S REASONING AND ANALYSIS:

9. Heard learned counsel for the Petitioner and learned counsel for the Opposite Party/State at considerable length. Perused the CRLMC, the Final Form, the charge-sheet, the case diary as placed before this Court, and the authorities cited at the Bar.

10. The question that falls for consideration is a narrow but important one, touching upon the contours of professional privilege available to a member of the Bar. An Advocate, who issues a legal notice strictly on the instructions of his Senior and on behalf of a named client, can be arraigned as a co-conspirator in offences of cheating, forgery, criminal breach of trust and money-laundering allegedly committed by that very client, especially in the absence of any independent

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[5] (2006) 6 SCC 736

material demonstrating his knowledge of, or active participation in, the underlying wrong.

11. It would be useful, at the outset, to disentangle the two distinct roles that appear to have become conflated in the charge-sheet that is the role of Karunakar Samal, the alleged unlicensed money-lender who is said to have extracted blank signed cheques from villagers and misused them, and the role of the Petitioner, an Advocate who, on the specific instruction of his Senior, Mr. Haramohan Pattnaik, printed and dispatched legal notices under Section 138 of the Negotiable Instruments Act, 1881, on behalf of one Bidhu Bhusan Naik. These are not one and the same thing, and the charge-sheet, in its anxiety to rope in every named individual appearing in the chain of events, appears to have elided the qualitative difference between the principal wrongdoer and the professional who merely lent his pen, and his letterhead to a client's instructions.

12. It is well settled, and does not require extensive elaboration, that an Advocate discharging his professional duty of drafting or having correspondence, including notices under Section 138 of the N.I. Act, on the instructions of his client, does not thereby become a guarantor of the truth of the averments contained therein. The Madras High Court ***in M.L. Ganesh v. C.A. Venkata Siva Kumar*** had aptly observed that a lawyer is but an advocate, one who speaks for another, and that beyond what the client places before him, the lawyer has neither the opportunity nor, indeed, the professional mandate to test the veracity of the instructions received. An advocate, who acted professionally as per instructions of his/her client cannot be made criminally liable for the offence committed by his client unless contrary is alleged and established. This principle was echoed by the Bombay High Court, Nagpur Bench, in ***Nemchand v. Vipin kumar***[6], and more recently and pointedly by the Madras High Court in ***J.N. Naresh Kumar v. Radhika Dolia*** (supra), where the Court quashed proceedings against an Advocate on the precise ground that responsibility for instructions acted upon rests with the client, and not with the lawyer who professionally executes them, in the absence of strong material establishing malice or complicity of the advocate.

13. This is not to suggest that the cloak of professional privilege is impenetrable, or an Advocate can never be made answerable for acts done in the garb of legal practice. Where an Advocate steps outside the four corners of his professional duty and becomes an active and knowing participant in the design of a fraud by lending not merely his services but his intelligence to the furtherance of an illegal object wherein the shield of privilege will not be made available to him, and rightly so he does not get the immunity from criminal prosecution. The true test, therefore, is not the mere fact of having issued a notice on a client's behalf, but whether there exists prima facie material to indicate that the Advocate had knowledge of the illegality underlying the client's instructions or that he was a willing and knowing party to the conspiracy alleged.

[6] **Criminal Application (APL) No.1538 of 2022(Bombay HC)**

14. Tested against this yardstick, the materials placed before this Court, even when read in their entirety and taken at their highest, disclose nothing beyond the undisputed fact that the Petitioner, acting under the instruction of his Senior received by email dated 24.01.2016, printed a legal notice wherein the contents of which were drafted by his Senior, upon his own letterhead and caused the same to be dispatched through the office clerk. There is no allegation, either in the FIR, the statements recorded under Section 161 Cr.P.C., or the Final Form/charge-sheet, that the Petitioner was privy to the financial dealings between Karunakar Samal, Bidhu Bhusan Naik and the complainants; nor is there any material to suggest that he had knowledge of the alleged scheme to extort money through misuse of blank cheques, or that he participated in any meeting, negotiation, or transaction connected therewith. The charge-sheet's bare assertion that a prima facie case is "well established" against the Petitioner is, on a plain reading of the case diary, wholly unsupported by any specific act, utterance, or circumstance attributable to him which is an *ipse dixit* dressed up as a finding.

15. Learned counsel for the State Ms. Patra further submitted that the question of the Petitioner's knowledge and intention is a matter of trial and cannot be adjudicated at the threshold. This Court is unable to accede to so broad a proposition. While it is true that disputed questions of fact ordinarily fall within the domain of the trial Court, the jurisdiction under Section 482 Cr.P.C. would be rendered illusory if this Court were to decline interference in every case merely because the charge-sheet uses the language of conspiracy, without pausing to examine whether any factual foundation exists for that label. Conspiracy is not a magic incantation that, once invoked, immunizes a charge-sheet from scrutiny, it must be anchored in some discernible act or circumstance, however slender, connecting the accused to the criminal design. Here, no such anchor exists insofar as the Petitioner is concerned.

16. This Court also finds considerable force in the observations of the Hon'ble Supreme Court in ***G. Sagar Suri v. State of U.P*[7].** and ***Indian Oil Corporation v. NEPC India Ltd*[8].**, cautioning against the growing tendency to convert what is, in substance, a private and civil dispute especially here, a money-lending transaction between Karunakar Samal and the complainants culminated into a criminal prosecution that ropes in collateral figures, including professionals who had no stake in or knowledge of the underlying transaction. To permit the Petitioner, an Advocate who at the relevant time had barely a decade of practice behind him and was merely executing his Senior's brief, to undergo the rigours of a full trial spanning charges as grave as those under the Prevention of Money Laundering Act, 2002, in the complete absence of any incriminating material, would be to sanction precisely the kind of prosecutorial overreach that Section 482 Cr.P.C. is designed to guard against.

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[7] AIR 2000 SUPREME COURT 754,

[8] 2006 (6) SCC 736,

17. It is also not without significance that the complainant, despite valid service, has chosen to remain absent before this Court, resulting in the matter proceeding ex parte against him, a circumstance that does lend some colour to the submission that the case against the Petitioner has been pursued more out of the sweep of a wide net than out of any considered prosecutorial focus. Modern common law systems generally do not treat lawyers as a privileged class incapable of committing crimes. Rather, they recognise that the ordinary discharge of professional functions should not casually be re-characterized as criminal participation. V. V. Imp

18. If every unsuccessful legal opinion or every factual representation made by a client could retrospectively become the foundation for criminal prosecution of the advocate, the Bar would cease to function as an independent component of the justice-delivery system. The BCI rules themselves recognise the advocate's duty to defend an accused irrespective of the advocate's personal opinion concerning guilt. In the absence of such connecting material, to permit the machinery of criminal law to proceed against an advocate merely because he rendered professional assistance in good faith would be to confuse professional association with criminal complicity, negligence with mens rea, and an erroneous exercise of professional judgment with participation in a criminal conspiracy. Criminal law, which visits penal consequences upon culpable conduct, cannot be permitted to operate upon such a slender and uncertain foundation.

19. This Court must, however, guard against being understood as expressing any opinion on the merits of the case as it stands against the other accused persons, namely Karunakar Samal, Haramohan Pattnaik and Bidhu Bhusan Naik, against whom the charge-sheet has proceeded independently, and in respect of whom this order shall have no bearing whatsoever. The quashing herein is confined strictly to the Petitioner, and is founded on the complete absence of material qua him alone.

V. **CONCLUSION**:

20. For the reasons aforestated, this Court is satisfied that the continuation of criminal proceedings against the Petitioner in Narla P.S. Case No. 83 of 2016, corresponding to C.T. Case No. 173 of 2016, pending before the learned J.M.F.C., M. Rampur, Kalahandi, would amount to an abuse of the process of the Court and would result in gross injustice and unwarranted harassment to a professional who has acted strictly within the bounds of his engagement.

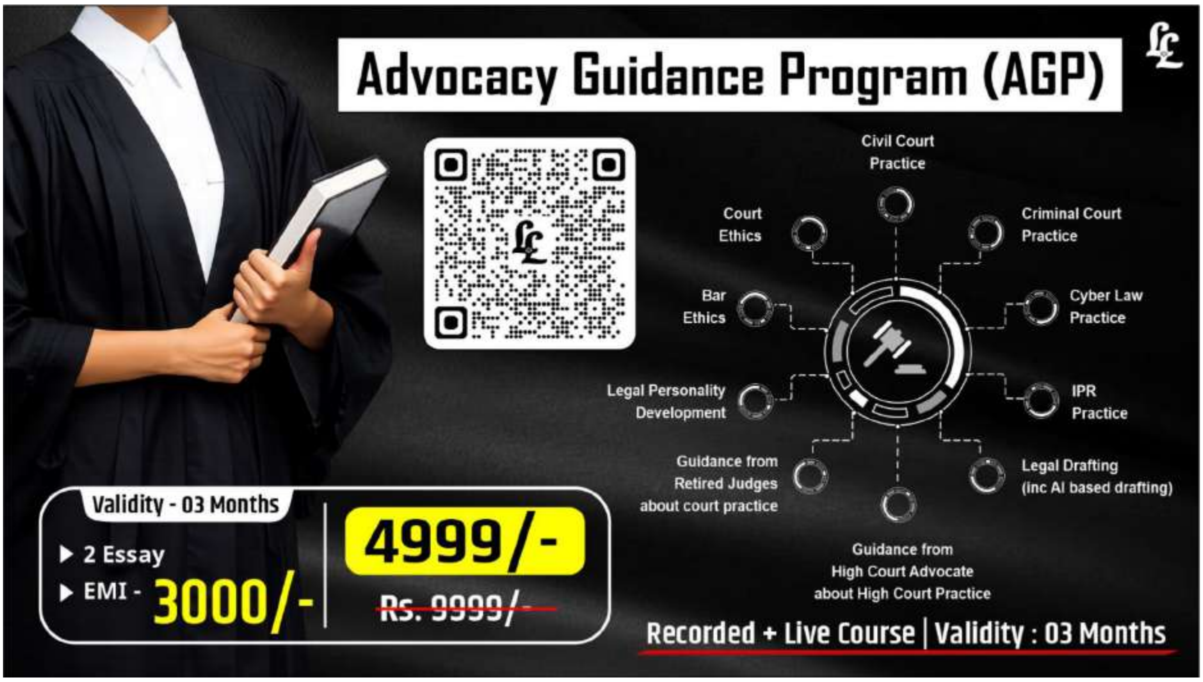
21. Accordingly, the CRLMC is **allowed.** The proceeding in C.T. Case No. 173 of 2016, qua the Petitioner named Bijayananda Panda, Advocate, stands quashed. The proceeding shall continue against the remaining accused persons in accordance with law, uninfluenced by any observation made herein.

22. The CRLMC is disposed of accordingly. Pending applications, if any, also stand disposed of. No order as to costs.

23. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 21st August, 2026/-



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