



THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 993 of 2024
CNR No. ODHC010220192024

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

Dillip Kumar Patel ***Petitioner(s)***

-Versus-

Rudra Narayan Pradhan ***Opp. Party(s)***

For the Petitioner : Mr. Amit Prasad Bose, Advocate
For the Opposite Party : Mr. D.P. Dhal, Sr. Advocate

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 14.07.2026 :: Date of Judgment: 30.07.2026

S.S. Mishra, J. The petitioner by invoking inherent jurisdiction of this Court under Section 482 Cr.P.C. has filed the present petition seeking quashing of the proceeding in CrI. ICC. No.05 of 2018 initiated against him by the opp. party which is pending in the court of learned



SDJM, Sonepur for alleged commission of offence punishable under Section 138 of N.I. Act.

2. Heard Mr. A.P. Bose, learned counsel for the petitioner and Mr. D.P. Dhal, learned Senior Counsel for the opposite party/complainant.

3. The sole contention of the petitioner is that the cheque in subject was issued by M/s Isar Engineering Pvt. Ltd. through the authorized signatory. However, without issuing a statutory notice under Section 138 (b) of the N.I. Act to either the company or the present petitioner in the capacity of the Managing Director of the company, the complainant/opposite party has issued notice to the present petitioner in his personal capacity and also initiated the complaint case in the personal capacity without arraigning the company as an accused. The petitioner has relied upon the judgment of this Court in the



case of ***Lalit Bariwala vrs. State of Orissa and another***, reported in **(2013) (I) ILR-CUT-905** and the judgment of the Hon'ble Supreme Court in the case of ***Aneeta Hada vrs. Godfather Travels & Tours Pvt. Ltd.***, reported in **2012 (5) SCC 661** to substantiate his point.

4. Mr. Bose, learned counsel appearing for the petitioner has taken this Court to the statutory notice, complaint, the documents filed by the complainant and the initial statement by way of affidavit filed by the complainant and submitted that even conjoint reading of all the documents does not make out case U/s.138 N.I. Act against the petitioner.

5. On the contrary, Mr. Dhal, learned Senior Counsel appearing for the opposite party/complainant emphatically relied upon the statutory notice under Section 138(b) of N.I. Act, which was addressed to the present petitioner, as Managing Director of the company, who had allegedly



issued the cheque. The address found mentioned in the notice reads as under:-

“Dillip Kumar Patel, Managing Director, Isar Engineering Pvt. Ltd., At/P.O.- Rangadipa, P.S./Dist- Sundargarh.”

Mr. Dhal, has also relied upon the judgment of the Karnatak High Court at Bengaluru in the matter of **Smt. Shaik Nowhera vrs. M/s Help Technology and Software Solutions Pvt. Ltd.** (Crl. P. No. 6013 of 2025 and batch of matters) and submitted that once a notice is issued to the Managing Director of the company under Section 138 (b) of the N.I. Act, it is to be treated as if the same being issued to the company itself. He has relied upon paragraphs-16 and 17 of the judgment which reads as under:-

“16. The short point that arises for consideration is the manner in which the accused has been described in the cause title of the private complaint. On perusal of the culled-out portion, it becomes evident that, instead of describing the accused in the conventional form as "Heera Group of Companies represented by its CEO and M.D.", the complainant has inverted the description,



first mentioning the name of the Director and thereafter appending the designation and the company's name. Such a mode of description, though somewhat irregular, does not alter the substance of the pleading. It still conveys in unambiguous terms that the complaint is directed against the company, with reference to its CEO and M.D. Therefore, the argument advanced on behalf of the accused that the company is not made a party at all is, in the opinion of this Court, far too hypertechnical and cannot be accepted.

17. The cause title, when read as a whole, clearly establishes that the company is very much impleaded as an accused. The only discernible defect is that the Director who signed the cheques has not been separately arrayed as Accused No.2, alongside the company. Such an omission is not of a nature that renders the proceedings void ab initio; rather, it is a curable defect that can be appropriately remedied during the course of proceedings. This Court cannot lose sight of the magnitude of the transactions in question, seventeen cheques aggregating to a sum of Rs.9,84,24,292/-. To adopt an unduly rigid or hyper-technical approach in such a context would result in grave prejudice to the complainant, effectively enabling the accused to evade liability despite the substantive ingredients of Section 138 of the N.I. Act being fully attracted.”



6. Mr. Dhal, learned Senior Counsel further submitted that the petitioner Company cannot be permitted to defeat the proceedings by raising hyper-technical objections regarding the manner of issuance of the statutory notice or its subsequent impleadment. According to him, the notice under Section 138(b) of the Negotiable Instruments Act was issued to the Managing Director in her official capacity at the address of the Company and, therefore, constituted sufficient notice to the Company itself. He further contended that the subsequent impleadment of the Company merely cured a technical defect in the complaint and did not occasion any prejudice to the petitioner, particularly when the trial had not commenced. Learned Senior Counsel submitted that procedural irregularities of such nature cannot be allowed to frustrate the object of the Negotiable Instruments Act, which is to ensure the



credibility of commercial transactions. Accordingly he submitted that the petition is liable to be dismissed.

7. I have taken into consideration the rival submission made by both the counsels and also perused the documents placed before this Court besides analyzing the judgment vis-à-vis the fact of the present case. It is clear from the photo copy of the cheque placed before this Court at Annexure-2 series that the cheque in subject was issued by M/s Isar Engineers Pvt. Ltd. signed by the authorized signatory. The statutory notice was issued to the present petitioner. The averments in the complaint reveals that the complainant is the Proprietor of M/s Rudra Motors, Manamunda and deals with iron materials like centring iron plates, water tankers, welding machines etc. It is averred in the complaint that the accused is a contractor and in the year 2017 had taken various materials from the complainant and issued the subject cheque towards the



same. The cheque of Rs.10,00,000/- issued by the accused alleged to have been dishonored for which the present case has been initiated. In the initial statement under Section 200 Cr.P.C. also it is averred as under:-

“3. The accused happens to be a recognised superclass contractor. In the year 2017 the accused being a recognized contractor has taken various materials like iron plates for centring of bridges, water tankers etc. and had also utilized my service like welding etc. and as the bank cheque given by the accused in discharge of the debt towards me was not honoured by the bank, criminal 1CC No.1/2018 and Cr. 1CC No.18/2017 is pending.

4. Prior to 22.09.2017 the accused had taken iron plates for the purpose of utilizing in centring work for the construction of bridges from me and has also utilized my service in the matter of welding and other works and the cost of the same became Rs.10,00,000/- (Rupees Ten Lakhs only).

5. I made repeated request to clear up the dues and the accused in response to such time and again request the accused gave me a bank cheque no.001225 dt.22.09.2017 for Rs.10,00,000/- (Rupees Ten Lakhs only) in discharge of the aforesaid outstanding. The accused while giving the cheque instructed me to present the cheque after over of two months.



The accused also singed the cheque in my business premises at Manamunda and gave the cheque to me in presence of the witnesses.

6. On 19.12.2017 I presented the cheque with S.B.I., Sonapur where I am having my account for the purpose of collection and deposit in my account. On 20.12.2017 by the return memo of the Axis Bank Ltd. it was intimated to me that the claim amount of the cheque cannot be paid to me as the accused had directed "stop payment". It shows the accused intentionally avoided payment to me."

8. It is averred in the complaint that on 16.01.2018 a demand notice was issued to the accused, which was served upon the accused petitioner. Since payment has not been made, the complainant/opposite party initiated the complaint case.

9. As it appears, the facts emanating from the pleadings and documents of the present case would not help the opposite party/complainant even though the judgment of the Karnataka High Court rules that a notice under Section 138 of N.I. Act was issued to the C.E.O. or M.D. would suffice for the purpose of prosecuting the company as well



as the C.E.O. and M.D. But from the averments made in the complaint in the initial statement, it is apparent that the accused petitioner had taken the materials from the complainant in his personal capacity being a Contractor, however the cheque was issued by the company wherein the petitioner happens to be the Managing Director. It is not found mentioned in the complaint or the initial statement that on behalf of the company the materials were taken from the complainant in lieu of which the cheque was issued. Therefore, paragraphs-16 and 17 of the judgment of the Karnataka High Court as reproduced above will have no application in the present case.

10. It is also noteworthy to mention here that the recent judgment of the Hon'ble Supreme Court in the case of ***Sanjabij Tari vrs. Kishore S. Borcar and another***, reported in ***2025 LiveLaw (SC) 952***, has elaborately dealt with the earlier judgment of the Hon'ble Supreme Court in



regard to the cases under Section 138 of N.I. Act and formulated the guidelines for helping the trial court for expeditious disposal of the complaint cases. Even in the said judgment it is held that a company is a necessary party in the event the cheque is issued by the company.

11. Since the complainant has not impleaded the company as a party, it is no more curable defect. Had it been a case where the complainant would have issued statutory notice under Section 138 (b) of the N.I. Act to the company and in the complaint, the company would not have been impleaded as an accused, that would have been a curable defect and the complainant could have been given an opportunity to cure such defects. But the fact of the present case speaks otherwise. Hence, this Court on the facts of the present case has no option rather to give indulgence to the petitioner.



12. Accordingly, the CRLMC is allowed. Consequently, the proceedings in CrI. I.C.C. No. 05 of 2018, instituted at the instance of Opposite Party, stand quashed.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack.
Dated the 30th Day of July 2026/Ashok