AFR

THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.4265 of 2022
CNR-ODHC010921262022

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

Bijayalaxmi Information Technology and Marketing Private Limited ……. ***Petitioner***

-Versus-

Sri Jadav Behera ……. ***Opp. Party***

For the Petitioner : Mr. Mohit Agarwal, Advocate

For the Opp. Party : Mr. U.C. Mishra, Advocate

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 18.05.2026 :: Date of Judgment: 30.07.2026

S.S. Mishra, J. The present CRLMC has been instituted by the petitioner under Section 482 of the Code of Criminal Procedure, 1973, challenging the judgment dated 24.12.2019 passed by the learned Sessions Judge, Angul in Criminal Revision No. 10 of 2015. The petitioner further seeks quashing of 1.C.C. No. 16 of 2013, along with the entire criminal proceeding arising therefrom, which is presently pending before the learned J.M.F.C. (L.R.), Angul for the alleged commission of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. Heard Mr. Mohit Agarwal, learned Counsel for the petitioner and Mr. U.C. Mishra, learned Counsel for the opposite party.

3. The brief facts leading to filing of the present CRLMC are that the opposite party, as complainant, instituted I.C.C. Case No. 16 of 2013 before the learned J.M.F.C., Angul alleging, inter alia, that accused No.1, the Managing Director of Bijaya Laxmi Information Technology and Marketing Pvt. Ltd., had issued three cheques, namely Cheque No. 279658 dated 04.11.2012 for Rs.4,60,000/-, Cheque No. 279647 dated 05.11.2012 for Rs.20,00,000/-, and Cheque No. 279660 dated 23.11.2012 for Rs.18,40,000/-, all drawn on IndusInd Bank, Angul Branch, aggregating to a sum of Rs.43,00,000/-. The complainant presented the said cheques through his banker, ICICI Bank Ltd., on 14.12.2012, but the same were dishonoured upon presentation. Thereafter, complying with the statutory requirements prescribed under the Negotiable Instruments Act, 1881, the complainant instituted the aforesaid complaint against the Directors of the company.

Upon recording the initial statement of the complainant, the learned S.D.J.M., Angul took cognizance of the offence punishable under Section 138 of the Negotiable Instruments Act and issued process only against Smt. Bijaya Manjari Satpathy, one of the Directors of the company, out of the five persons arrayed as accused. Subsequently, the case was transferred to the Court of the learned J.M.F.C. (L.R.), Angul, where an application under Section 319 of the Code of Criminal Procedure was filed on behalf of the complainant seeking impleadment of the company as an accused in the proceeding. Subsequently, the present petitioner has been arrayed as an accused being the issuer of cheque vide the impugned order and the same has been assailed in the present petition.

4. Mr. Agarwala, learned counsel for the petitioner, submitted that the impugned judgment dated 24.12.2019 passed by the learned Sessions Judge, Angul is liable to be set aside as the petitioner Company was neither impleaded as a party nor was afforded any opportunity of hearing in the criminal revision proceedings, in violation of Section 401(2) of the Code of Criminal Procedure. He further submitted that the petitioner has an independent right to challenge the revisional order, the earlier order passed by this Court in CRLMC No. 390 of 2016 having no bearing on the petitioner's right, as it was not a party to the said proceeding.

5. Mr. Agarwala further contended that the learned Sessions Judge failed to appreciate that prosecution under Section 138 of the Negotiable Instruments Act can be maintained only upon strict compliance with the mandatory requirements of Sections 138 and 142 of the Act. According to him, the dishonoured cheques were issued by the petitioner Company, yet no statutory demand notice under Section 138(b) of the Act was ever served upon the Company. In the absence of such notice, no cause of action could have arisen against the petitioner Company and, therefore, its subsequent impleadment as an accused by invoking Section 319 Cr.P.C. was legally impermissible.

6. Placing reliance on the decisions of the Hon'ble Supreme Court in ***N. Harihara Krishnan v. J. Thomas***[1] and ***Jamin v. State of Uttar Pradesh***[2], learned counsel submitted that the mandatory statutory requirements under the Negotiable Instruments Act cannot be circumvented by subsequently impleading the drawer Company and that

---

[1] 2018 (13) SCC 663
[2] 2025 INSC 330

any order adversely affecting a proposed accused without affording an opportunity of hearing is unsustainable in law.

7. In the light of the above submissions, Mr. Agarwala, learned counsel for the petitioner, prayed for setting aside the judgment dated 24.12.2019 passed by the learned Sessions Judge, Angul in Criminal Revision No. 10 of 2015. He further prayed for quashing the complaint proceeding in 1.C.C. No. 16 of 2013 pending before the learned J.M.F.C. (L.R.), Angul.

8. *Per contra*, Mr. Mishra, learned counsel for the opposite party, supported the impugned judgment and submitted that the present petition is not maintainable as the issue sought to be raised by the petitioner already stands concluded by the order dated 23.09.2022 passed by this Court in CRLMC No. 390 of 2016. He contended that the petitioner is attempting to re-agitate the very same issue once again in this proceeding, which is impermissible in law.

9. Learned counsel further submitted that the application filed before the trial court for impleadment of the petitioner Company was, in substance, one seeking amendment of the complaint to cure a technical defect at a stage when the trial had not commenced. According to him, no prejudice has been caused to the petitioner by its subsequent impleadment as an accused.

10. Mr. Mishra further contended that the statutory demand notice under Section 138 of the Negotiable Instruments Act had been issued to the Managing Director of the petitioner Company in her official capacity and not in her personal capacity. He submitted that such notice substantially amounted to notice to the Company itself and, therefore, the contention that no statutory notice had been issued to the petitioner Company is devoid of merit.

11. Placing reliance upon the decision of the Hon'ble Delhi High Court in ***Himanshu v. TCNS Clothing Co. Ltd.***[3], learned counsel submitted that the subsequent impleadment of the Company is legally sustainable in the facts and circumstances of the present case. He further submitted that, in any event, the issue had already been considered by this Court in the earlier proceeding between the parties.

On the aforesaid grounds, Mr. Mishra prayed for dismissal of the present CRLMC.

---

[3] 2025 DHC 7593

12. Upon a careful consideration of the rival submissions and the materials available on record, this Court finds no merit in the contention advanced on behalf of the petitioner that the complaint proceeding is liable to be quashed on the ground that no separate statutory notice under Section 138(b) of the Negotiable Instruments Act had been issued to the petitioner Company.

13. It is not in dispute that the cheques in question were issued by the petitioner Company, in discharge of the alleged liability of the Company. The statutory demand notice was admittedly addressed to and served upon the Managing Director in her official capacity. A company, being a juristic person, can act and acquire knowledge only through the individuals who are entrusted with the management of its affairs. The Managing Director occupies the highest executive position in the Company and is vested with substantial powers relating to the conduct of its business of the company. Consequently, service of the statutory notice upon the Managing Director, in her representative capacity, cannot be viewed in isolation from the Company itself.

14. The contention of the petitioner that the subsequent impleadment of the Company under Section 319 Cr.P.C. is impermissible solely because no separate notice was addressed in the name of the Company is equally devoid of substance. The statutory object underlying Section 138(b) of the Negotiable Instruments Act is to afford an opportunity to the drawer to make payment upon receipt of notice. Where such notice has been served upon the Managing Director representing the Company and the Company itself has subsequently been brought on record as an accused, the requirement of notice cannot be interpreted in an unduly technical or hyper-technical manner so as to defeat the very object of the enactment.

15. The reliance placed by the learned counsel for the petitioner on the decisions in ***N. Harihara Krishnan*** (supra) and ***Jamin*** (supra) does not advance the petitioner's case. The facts obtaining in the present case are materially distinguishable. Here, the complaint itself proceeds on the basis that the cheques were issued on behalf of the Company by its Managing Director, who was duly served with the statutory notice in that capacity. The revisional court has merely permitted the Company, being the principal drawer of the cheque, to be brought on record so that the complaint may proceed in accordance with law. Such a course cannot be said to have caused any prejudice warranting interference in the exercise of inherent jurisdiction under Section 482 Cr.P.C.

16. This Court is also not persuaded by the submission that the revisional order deserves to be set aside on account of non-impleadment of the petitioner in the revision proceeding. The petitioner seeks to invoke the inherent jurisdiction of this Court to *veto* a prosecution at its threshold on grounds which are essentially technical in nature. The inherent power under Section 482 Cr.P.C. is intended to prevent abuse of the process of Court and to secure the ends of justice. It cannot be exercised to stifle a prosecution where the complaint, read as a whole, discloses the essential ingredients of the offence and where the alleged procedural defect has neither occasioned failure of justice nor caused any demonstrable prejudice.

17. The Negotiable Instruments Act is a beneficial legislation enacted to enhance the credibility of commercial transactions. The provisions relating to issuance of statutory notice cannot be construed in a manner that enables a drawer of the cheque to evade liability on technical grounds and objections, particularly when the Managing Director, who was admittedly in control of the affairs of the Company, had received the statutory notice in her representative capacity. Acceptance of the petitioner's contention would amount to permitting a purely technical objection to frustrate the object of the statute and would encourage avoidance of liability rather than advance the cause of justice. The observations of the Karnataka High Court in ***Maxworth Realty India Ltd. v. M.K. Veerendra Babu***[4], lend support to the above view. The relavant paragraphs from the Judgment are as follows:

> "**15.** On close reading of the said Section, it states that if the person committing an offence under Section 138, is a Company, every person who, at the time of the offence was committed, was incharge and responsible to the Company for the conduct of its business shall also be deemed to be guilty. The reason for creating vicarious liability is plainly that a juristic entity i.e., a Company would be run by living persons who are in charge of its affairs and who guide the action of that Company and if such juristic entity is guilty, ultimately it is the persons who are responsible for its affairs and they must be held responsible and convicted. The Hon'ble Apex Court in the case of *Krishna Texport & Capital Markets Ltd.* v. *Ila A. Agrawal* reported in (2015) 8 SCC 28, has come to the conclusion that there is no requirement of sending of individual notices to the Directors of the Company as Section 141 of the N.I. Act does not lay down any requirement that individually notice has to be served under Section 138 of the N.I. Act to such persons, as the persons who are at the helms of the affairs of the Company, naturally be aware of the notice of demand issued to such Company. The said lapses can be rectified in this behalf. At paragraph-16 of the aforesaid decision, it has been observed as under:—
>
> "***16.*** *Section 141 states that if the person committing an offence under Section 138 is a company, every Director of such company who was in charge of and*

[4] 2019 SCC OnLine Kar 1652 (Affirmed by Hon'ble Supreme Court in ***K. Kesava Vrs. M.K. Veerendra Babu*** reported in **2021 SCC OnLine SC 3463**)

HIGH COURT ORISSA

responsible to that company for conduct of its business shall also be deemed to be guilty. The reason for creating vicarious liability is plainly that a juristic entity i.e. a company would be run by living persons who are in charge of its affairs and who guide the actions of that company and that if such juristic entity is guilty, those who were so responsible for its affairs and who guided actions of such juristic entity must be held responsible and ought to be proceeded against. Section 141 again does not lay down any requirement that in such eventuality the Directors must individually be issued separate notices under Section 138, The persons who are in charge of the affairs of the company and running its affairs must naturally be aware of the notice of demand under Section 138 of the Act issued to such company. It is precisely for this reason that no notice is additionally contemplated to be given to such Directors. The opportunity to the "drawer" company is considered good enough for those who are in charge of the affairs of such company. If it is their case that the offence was committed without their knowledge or that they had exercised due diligence to prevent such commission, it would be a matter of defence to be considered at the appropriate stage in the trial and certainly not at the stage of notice under Section 138."

16. Keeping in view the aforesaid ratio, as the Company being a legal entity, it cannot acquire knowledge as a human being, knowledge of a Company actually means, knowledge of the people who are having control over such Company. Generally it is the Chairman or Managing Director of a Company who will be having knowledge. Section 2(54) of the Companies Act, 2013 defines the Managing Director as: "Managing Director means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the

position of Managing Director, by whatever name called."

17. As per the definition, the Managing Director is a person who is entrusted with substantial power of the management of the affairs of the Company. Notice served on the Managing Director would thus imply that the Company is made aware of the dishonour of the cheque and of the demand for payment of the disnonoured cheque as contemplated under Section 138 of the N.I. Act. Learned Senior Counsel for the petitioners-accused has relied upon the decision of the Hon'ble Apex Court in the case of *Himanshu* v. *B. Shivamurthy* (cited supra), wherein at paragraphs-6, 7, 11 and 13, it has been observed that in the absence of notice of demand being served on the Company and without compliance with the Proviso to Section 138 of the N.I. Act, the Company could not be held liable. In that case at paragraph-4, it has been observed that the cheque was issued by a Director of Lakshmi Cement and Ceramics Industries Ltd., a public limited company and the complaint was initiated against an individual without arraying the Company as an accused. Under such circumstances, the Company was not arrayed as an accused as contemplated under Section 141 of the N.I. Act. In that light, the Hon'ble Apex Court has come to the conclusion that in the absence of notice of demand served on the Company is held to be non-compliance of Section 138 of the N.I. Act. hence, the said ratio laid down is not applicable to the facts of the present case.

18. In the instant case, it is not in dispute that accused No. 1 is a Company and accused No. 2 is the Managing Director of accused No. 1. When the statutory notice is issued to the Chairman and Managing Director of the Company and when both Company and the Managing Directors are the persons who are at the helms of the affairs of the Company, Company is vicariously liable. Under such circumstances, the contention of the learned Senior Counsel that there is no cause of action as the notice has not been served, is not having any force and the same is liable to be rejected."

18. The conduct of Petitioner clearly indicates that it's an attempt to prolong the proceedings, rather than addressing the matter on its merits. Such dilatory tactics cannot be encouraged, as they frustrate the object of the law and unnecessarily delay the administration of justice. Permitting an accused to evade the legal process through repeated and untenable objections would prejudice the rights of the complainant and undermine the very purpose for which the statutory remedy that has been enshrined under the N.I. Act.

19. In view of the discussions made hereinabove, this Court finds no illegality, impropriety or jurisdictional error in the judgment dated 24.12.2019 passed by the learned Sessions Judge, Angul in Criminal Revision No.10 of 2015 warranting interference in exercise of the inherent jurisdiction under Section 482 Cr.P.C. The impugned order does not suffer from any perversity so as to justify quashing of the complaint proceeding.

20. Accordingly, the CRLMC being devoid of merit stands dismissed. Consequently, the interim order, if any, stands vacated. The learned trial Court shall proceed with I.C.C. No.16 of 2013 in accordance with law, uninfluenced by any observation made in this judgment, which has been rendered only for the purpose of deciding the present petition.

………………….
(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack
Dated the 30th of July, 2026/ Subhasis Mohanty