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THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2229 of 2022
CNR No. ODHC010538952022

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

Suniti @ Sunita Patnaik ***Petitioner***

-Versus-

Sajjan Kumar Agrawal ***Opposite Party***

For the Petitioner : Mr. Manas Chand, Advocate

For the Opposite Party : Mr. Tanmay Mishra, Advocate

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 09.07.2026 :: Date of Judgment: 30.07.2026

S.S. Mishra, J. The present petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of the entire criminal proceeding in I.C.C. Case No.12 of 2020 pending before the learned S.D.J.M., Dharamgarh, including the order dated 25.04.2022, whereby cognizance of the offence punishable under Section 138 of the Negotiable



Instruments Act, 1881 (hereinafter referred to as the "N.I. Act") has been taken against the petitioner and the co-accused.

2. Heard Mr. Manas Chand, learned counsel for the petitioner, and Mr. Tanmay Mishra, learned counsel for the opposite party.

3. The prosecution case, in brief, is that the opposite party is the proprietor of Bhawani Traders, dealing with hardware materials. It is alleged that hardware materials worth Rs.22,42,145/- were supplied on credit towards construction work under the Swachh Bharat Scheme, with an understanding that the outstanding amount would be paid within two months. As the amount remained unpaid, a cheque bearing No.114494 dated 07.11.2019, drawn on IDBI Bank Ltd., was issued in favour of the complainant-trader towards discharge of the outstanding liability. The cheque, upon presentation, was dishonoured for insufficiency of funds. The complainant thereafter issued a statutory demand notice dated 24.01.2020, which was returned undelivered on 30.01.2020, and subsequently instituted the complaint on 18.02.2020. The learned Magistrate, upon perusal of the complaint, the initial statement and the relevant documents including the cheque, dishonour memo, demand notice and postal documents, found prima facie material and took



cognizance offence under Section 138 of the N.I. Act against the petitioner and the co-accused. It is reproduced below for ready reference:-

“The Case record is put up today for taking cognizance. Learned counsel for the complainant is present and filed hazira. Heard. Perused the complaint petition, initial statement of the complainant and the original documents viz. the cheques bearing No.114494 dated 07.11.2019 for Rs. 2240125/- drawn on SBI, the dishonour memos, pleader notice, postal receipt, un-delivered notice etc. submitted by the complainant. As the offence U/s. 138 of N.I. Act is based upon documents, inquiry U/s. 202 of Cr.P.C. was conducted in this case through verification of documents only. Perused the above mentioned documents from which it reveals that there exists prima facie materials to proceed in this case against the accused persons Swarnandu Sai Pattnaik and Sunita Pattnaik U/s. 138 of N.I. Hence, cognizance of the offence U/Sec-138 NI Act is taken against accused persons Swarnandu Sai Pattnaik and Sunita Pattnaik. Hence the complainant is directed to file the requisites on 20.05.2022 for issuance of summons to the accused persons.”

4. The principal contention advanced on behalf of the petitioner is that the transaction in question was, in substance, between the complainant and "Srusti", a Trust, and that the cheque was issued from the account of the said Trust. It is contended that since the Trust has not been arraigned as an accused, the complaint case against the petitioner, who is stated to



be associated with the Trust, is not maintainable. Reliance has been placed on the earlier decisions which, according to the petitioner, required the juristic entity responsible for issuance of the cheque to be impleaded as an accused. The petitioner has also challenged the complaint on the ground that the statutory notice and the institution of the complaint were not in accordance with the mandatory requirements of Section 138 of the N.I. Act. These grounds are substantially reflected in the petition, wherein it has been contended that the Trust was not made a party and that the complaint was allegedly filed prematurely.

5. Per contra, learned counsel for the opposite party submitted that the objection regarding non-impleadment of the Trust is wholly untenable in view of the subsequent authoritative pronouncement of the Hon'ble Supreme Court in *Sankar Padam Thapa v. Vijaykumar Dineshchandra Agarwal*, reported in **2025 SCC OnLine SC 2194**. It is submitted that the Hon'ble Supreme Court has categorically held that, in a prosecution under Section 138 of the N.I. Act, where the cheque has been signed by a Trustee, the complaint is maintainable against such Trustee without the necessity of arraigning the Trust as an accused. He further submitted that the earlier decisions taking a contrary view, including the judgment of this



Court in *Bijaya Manjari Satpathy v. State of Orissa*, reported in **2022 LiveLaw (Ori) 158**, have been expressly overruled.

6. Having considered the rival submissions, this Court finds that the principal issue which arises for consideration is whether the complaint under Section 138 of the N.I. Act is liable to be quashed merely on the ground that the Trust, allegedly connected with the transaction and the bank account from which the cheque was issued, has not been arrayed as an accused.

7. The said question is no longer *res integra*. The Hon'ble Supreme Court in *Sankar Padam Thapa v. Vijaykumar Dineshchandra Agarwal*, reported in **2025 SCC OnLine SC 2194**, has considered the precise question as to whether, in the absence of a Trust being made an accused in a complaint under the N.I. Act, where a cheque has been issued on behalf of a Trust, the complaint would nevertheless be maintainable against the Trustee who has signed the cheque. The Hon'ble Supreme Court, after examining the legal nature of a Trust and the statutory scheme of the N.I. Act, answered the question in the affirmative and held that when a cause of action arises on account of dishonour of a cheque and a complaint is instituted under the N.I. Act, the same is maintainable against the Trustee



who has signed the cheque, without any requirement of arraying the Trust as an accused. Relevant part of the judgment is reproduced below for ready reference:-

“26. Ergo, it is clear that though a Trust may act or even be treated as an entity for certain legal purposes and not all legal purposes, a Trust is an obligation imposed on the ostensible owner of the property to use the same for a particular object - for the benefit of a named beneficiary or charity, and it is the Trustee(s) who are bound to maintain and defend all suits and to take such other steps with regard to the nature, land or the value of the Trust property, that may be reasonably required for the preservation of the Trust property, and the assertion of protection of title thereto, subject to the provisions of the instructions of Trust to take such other steps.

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28. Though we have delved into the issue of whether a Trust can sue or be sued on its own, we would make it amply clear (and as would also become evident from what follows infra) on this point, that our view is confined to examination of the subject in the context of the NI Act alone, in praesenti. We were called upon to consider only as to whether without making a Trust an accused, a complaint would be maintainable against a Trustee in the eye of law under the NI Act.

29. Hence, the question posed is answered in the affirmative. When a cause of action arises due to an alleged dishonour of cheque and a complaint is initiated under the NI Act, the same is maintainable against the Trustee who has signed



the cheque, without the requirement to array the Trust also as an accused.

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38. The views expressed by the respective High Courts in Prana Educational and Charitable Trust (supra); Dadasaheb Rawal Co-op. Bank of Dondaicha Ltd. (supra); Abraham Memorial Educational Trust (supra); Mukund (supra), and; Bijaya Manjari Satpathy (supra) run counter to what we have held above. The same do not commend themselves to us and are overruled in law, without disturbing their effect(s) inter-parties.”

8. The ratio laid down by the Hon'ble Supreme Court is directly applicable to the controversy raised in the present case. The contention of the petitioner that the complaint is fundamentally defective merely because “Sruti”, “the Trust”, has not been impleaded as an accused, therefore, cannot be accepted. The petitioner cannot derive any advantage from the earlier decisions which proceeded on a contrary legal premise, particularly when the Hon'ble Supreme Court has expressly held that the views taken in, inter alia, Bijaya Manjari Satpathy and the other judgments referred to therein do not lay down the correct law and have been overruled.

9. In this connection, the principle stated by the Hon'ble Supreme Court regarding the binding nature of the law declared by it is also of



significance. Merely because another decision has been referred for consideration by a larger Bench, the binding effect of the existing declaration of law cannot be disregarded unless the Supreme Court itself has specifically directed the subordinate courts to await the outcome of such reference. The High Court is, therefore, required to decide the present matter in accordance with the law as it stands. Relevant part of the judgment *Sankar Padam Thapa (supra)* is reproduced below for ready reference:-

“42. We are conscious that Pratibha Pratisthan (supra) has been doubted and referred to a Larger Bench vide Order dated 04.10.2019 in Tara Bai Desai Charitable Ophthalmic Trust Hospital v. Supreme Elevators India (P) Ltd., Special Leave Petition (Civil) No. 18636/2019 [since reported as (2025) 3 SCC 80]. In fact, one of us (Ahsanuddin Amanullah, J.) was nominated by Hon'ble the then Chief Justice of India to be part of the 3-Judge Bench constituted to hear the afore-noted reference. As the learned Judge presiding over that 3-Judge Bench has since demitted office, it would entail nomination of a new coram. However, till the reference is decided one way or the other, the law as declared in Pratibha Pratisthan (supra) continues to hold the field as no order has been passed in Special Leave Petition (Civil) No. 18636/2019 requesting other Benches to await the outcome thereof. There is no doubt on this, given the clear dicta in Union Territory of



Ladakh (supra) [2-Judge Bench], which after surveying the law, held:

‘35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680 [See Paragraphs 27 and 28 in the report on this point.]. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.’”

Consequently, this Court has no hesitation in holding that the objection regarding non-impleadment of the Trust does not constitute a ground for quashing the complaint or the order taking cognizance.



10. The next contention relates to the statutory demand notice and the alleged premature institution of the complaint. The material available on record indicates that the cheque was presented for encashment and, according to the complaint, the dishonour memo was received by the complainant on 13.01.2020. Thereafter, the statutory demand notice was issued on 24.01.2020, which was returned on 30.01.2020. The complaint was instituted on 18.02.2020. The petitioner's contention that the complaint was filed within 15 days from the return of the notice and was, therefore, premature, cannot be accepted at this stage as a ground for quashing the entire proceeding. The statutory scheme under Section 138 of the N.I. Act has to be examined with reference to the date of receipt of information regarding dishonour, issuance and service/deemed service of notice and the accrual of the cause of action. The complaint itself records the issuance of notice and its return undelivered, and the issue of service or deemed service, as well as the precise computation of limitation, is ordinarily a matter which can be appropriately considered on the basis of evidence and the materials brought before the learned trial Court.

11. It is well settled that the jurisdiction under Section 482 Cr.P.C. is to be exercised sparingly and with circumspection. At the stage of taking



cognizance, the Court is not required to conduct a meticulous examination of the evidence or undertake an adjudication of disputed questions of fact. The Court is only required to ascertain whether the allegations and the materials placed before the Magistrate disclose the commission of the alleged offence and whether the continuation of the proceeding would, on the face of the record, amount to an abuse of the process of law.

12. In the present case, the learned Magistrate has considered the complaint, the initial statement of the complainant and the documents produced in support thereof, including the cheque, the dishonour memo, the statutory notice and the postal documents. Upon such consideration, the learned Magistrate found prima facie materials to proceed against the petitioner and the co-accused under Section 138 of the N.I. Act and accordingly took cognizance. The order of cognizance records such consideration and cannot be said to be wholly without application of mind.

13. The present case, therefore, does not fall within the narrow parameters warranting exercise of the inherent jurisdiction of this Court to terminate the criminal proceeding at its inception. The allegations in the complaint, coupled with the documents relied upon by the complainant,



disclose sufficient prima facie material for continuation of the proceeding. The subsequent authoritative pronouncement of the Hon'ble Supreme Court also completely answers the principal objection raised by the petitioner concerning the non-impleadment of the Trust.

14. For the reasons stated above, this Court finds no merit in the present petition. The challenge to the maintainability of the complaint on the ground of non-impleadment of the Trust is rejected. The challenge to the order dated 25.04.2022 passed by the learned S.D.J.M., Dharamgarh, taking cognizance of the offence under Section 138 of the N.I. Act in I.C.C. Case No.12 of 2020, also fails.

15. Accordingly, the CRLMC is dismissed.

(S.S. Mishra)
Judge