

(2016) 06 OHC CK 0035
In the Orissa High Court
Case No : CRLMC No. 21 of 2013

M.D., Ores Ispat (P) Ltd.

APPELLANT

Vs

Sri Dusmant Kar

RESPONDENT

Date of Decision : 29-06-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2016) sup2 CutLTCriminal 799 : (2016) 2 ILRCuttack 582

Hon'ble Judges : B.K. Nayak, J.

Bench : Single Bench

Advocate : M/s. Prasanta Ku. Satapathy, Advocate, for the Petitioner; Mr. Jagajit Panda, Advocate, for the Opposite Party

Final Decision : Allowed

Judgement

B.K. Nayak, J.—Heard learned counsel for the parties.

2. In this application under Section 482 Cr.P.C., the petitioner prays for quashing the order dated 10.07.2009 passed by the learned J.M.F.C., Angul in C.T. Case no.1338 of 2009 taking cognizance of offence under Section 138 of the Negotiable Instruments Act and issuing process to the petitioner.

3. The only contention raised by the learned counsel for the petitioner is that since the averments in the complaint petition go to show that the cheque in question was issued towards discharge of liability by a registered company of which the petitioner was the Managing Director, without the company being impleaded or arrayed as an accused, the complaint petition was not maintainable and therefore, the order of cognizance is vitiated.

4. Learned counsel appearing for the opposite party-complainant submits that the petitioner was not named, but was impleaded in his official capacity as Managing Director of the accused-company and therefore, the principle that in absence of the company as an accused the person in charge of management of

the company cannot be held liable is not applicable.

5. There is no dispute over the proposition, as has been held by the Hon''ble apex Court in the decision reported in (2012) 5 Supreme Court Cases 661 : Aneeta Hada v. Godfather Travels and Tours Pvt. Ltd. that in terms of Section 141 of the Negotiable Instruments Act it is imperative that the company as well as the officers of the company responsible for the management or authorised to issue cheque are to be arrayed as accused for prosecution under the Act. Admittedly the company, Ores Ispat (P) Ltd., Uditnagar, Rourkela is a registered company and the cheque was issued for discharge of debt of the company which was dishonoured. The only accused arrayed in the complaint petition is the present petitioner, who is the Managing Director of the said company. The company, which is a juristic person, has not been separately arrayed as an accused.

Learned counsel for the opposite party-complainant has not been able to bring to the notice of this Court any authority to the effect that where the Managing Director alone has been arrayed as an accused in the complaint in his official capacity and not by his name, there is no necessity of impleading the complainant itself as an accused.

6. Therefore, the company being not made an accused in the complaint petition, the complaint is not maintainable and consequently the impugned order taking cognizance is vitiated.

7. I allow the CRLMC and quash the said order of cognizance dated 10.07.2009 passed in C.T.Case No.1338 of 2009 by the learned J.M.F.C., Angul.