

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3777 of 2012

Dr. Sujata Kar.

....

Petitioner

-versus-

Rajendra N. Rout.

....

Opposite Party

CORAM: JUSTICE S.PUJAHARI

ORDER
01.08.2022

Order No.

11. 1. This matter is taken up through Hybrid mode.
2. The petitioner in this application under Section 482 of the Code of Criminal Procedure (for short “Cr.P.C.”) has prayed for quashing of the order dated 13.09.2011 passed by the learned 1st Addl. Sessions Judge, Bhubaneswar in Criminal Revision No.8/68 of 2010 setting aside the order dated 23.08.2010 passed by the learned S.D.J.M., Bhubaneswar in I.C.C. No.2556 of 2010 taking cognizance of the offence under Section 138 of the N.I. Act.
3. Heard the learned counsel for the petitioner-complainant. None appears for the opposite party-accused.

4. The grievance of the petitioner in this petition is that the revisional Court held her complaint petition to be incompetent one without hearing her and set-aside the order of cognizance, as such, the order of the revisional Court is liable to be quashed and the matter is required to be remitted back to be restored to file for a re-hearing.

5. On perusal of the order of the revisional Court, it appears that in spite of the opportunities given the petitioner did not appear and, as such, in her absence the impugned order was passed. Hence, it cannot be said that the impugned order was passed without giving her any opportunity of hearing. So, the impugned order cannot be quashed on the ground so stated.

6. Now, coming to the merit of the revision petition, it seems that the offending cheque was issued by the opposite party on behalf of M/s. Sumitra Realcon Pvt. Ltd.. The cheque having been presented by the present petitioner, who was the payee, it was dishonoured. Thereafter, on complying with the statutory provisions as claimed, the petitioner made the complaint. The company was not arrayed as a party in the complaint petition, but only the drawer of the offending cheque was arrayed as accused who had drawn the cheque on behalf of the company. It has been held by the Apex Court in the case of *Aneeta Hada v. Godfather Travels & Tours Private Limited, reported in (2012) 5 SCC 661* as follows:-

“59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraiging of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada is overruled with the qualifier as stated in para 51. The decision in Modi Distillery has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

The aforesaid law has been reiterated by the Apex Court and also the different High Courts in a line of decisions rendered thereafter.

7. The petitioner having not made the company, on whose behalf the offending cheque was issued, as a party in her complaint petition, the complaint filed against the opposite party who signed the cheque as an authorized signatory of the company, is incompetent one. Accordingly, I find no illegality and infirmity in the impugned order, inasmuch as on that ground the revisional Court has set-aside the order of cognizance, and quashed the prosecution pending against the opposite party.

8. However, it is submitted by the learned counsel for the petitioner that liberty may be given to the petitioner to file a fresh complaint making the company as a party. It is open to

her to do so, but it goes without saying that in that event the Court shall deal with the same in accordance with law.

9. With the aforesaid order, this CRLMC being devoid of merit stands dismissed.

(S. Pujahari)
Judge

MRS

