

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.4094 of 2011

Sriram Agarwal ***Petitioner***

-versus-

Krupasindhu Gahan ***Opposite Party***

CORAM: JUSTICE S. PUJAHARI

ORDER

21.03.2022

Order

No.

05.

1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order dated 3rd August, 2009 passed by the learned S.D.J.M., Talcher in I.C.C. No.57 of 2009, taking cognizance of the offence under Section 138 of the N.I. Act, 1881 against him as well as the entire proceeding.
3. Heard the learned counsel for the Petitioner. No one appears on behalf of the Opposite Party.
4. The Petitioner in this case has sought for quashment of the cognizance on the ground that since the cheque was not drawn by him for discharge of his debt and liability, as revealed from the complaint petition, even though he has drawn cheque in favour of the complainant, he could not have been proceeded with under Section 138 of N.I. Act, more particularly, when it is a case of the complainant that the said cheque was drawn in his favour by the present Petitioner for discharge of debt and liability of M/s. Ores Ispat Pvt. Ltd. without making the said company as a party.

5. After hearing the learned counsel for the Petitioner, I am of the view that it is never the case of the Petitioner that the cheque was drawn for the company. No doubt, the same has been drawn for discharge of debt and liability of the company, in which, the Petitioner was the Managing Director, but the cheque has been drawn by the Petitioner in his personal capacity for discharge of the debt and liability of the company. A person drawing a cheque for discharge of debt or liability of third party is also liable for prosecution when the cheque presented is dishonored, under Section 138 of N.I. Act is well settled. Further, the present cheque was drawn was not of the company, hence not making the company as a party though for discharge of debt and liability of the company, the company is not required to be made a party in the proceeding, the Criminal Misc. Case filed challenging the proceeding on the ground stated is devoid of merit.

6. Accordingly, the CRLMC stands dismissed.

7. However, Petitioner is at liberty to raise such defence as available to him, during the hearing of the case and in the event, it is hope and trust that the Court shall do the needful to address the same while disposing of the case.

(S. Pujahari)
Judge

DA