

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1899 of 2011

Sriram Agarwal *Petitioner*

-versus-

Krupasindhu Gahan *Opposite Party*

**CORAM:
THE JUSTICE S.PUJAHARI**

**ORDER
27.04.2022**

**Order
No.**

05. 1. This matter is taken up through Hybrid mode.
2. This application under Section 482 Cr.P.C. has been filed by the Petitioner for quashment of the order dated 25.02.2011 passed by the learned S.D.J.M., Talcher in ICC Case No.120 of 2009 wherein the learned S.D.J.M has taken cognizance under Section 138 of the N.I Act against him.
3. It appears from the complaint petition that the complainant made a complaint against the Petitioner under Section 420 IPC and Section 138 of the N.I Act. From the complaint petition, it is apparently shown that the notice was not issued which is a sine qua non inasmuch as under Section 138(b) of the N.I Act

giving notice to the drawer of the cheque to make the payment and on his failure to make the payment within the period stipulated the question of criminality arises. Since the same has not been complied with, Mr. Udgata, learned counsel for the Petitioner submits to quash the impugned order of cognizance.

4. However, learned counsel for the Opposite Party submits that the notice was given to the accused.

5. However, on perusal of the complaint petition it is not clearly forthcoming that there was compliance of Section 138(b) of the N.I Act on dishonor of the cheque. But the learned counsel appearing for the Opposite Party has seriously disputed the same. In such premises, this Court sets aside the order of cognizance and remits the matter back to the learned S.D.J.M., Talcher to readdress the question of cognizance and proceed against the Petitioner, if the ingredients of the offence are made out disclosing the offence under Section 138 of the N.I Act i.e. there is compliance of Section 138 (b) of the N.I Act available from the record, within 15 days from the date of production of a certified copy of the order. However, in the said proceeding, the

Petitioner shall have no chance of hearing inasmuch as the Petitioner has nothing to say at the stage of cognizance.

6. With the aforesaid order, this CRLMC stands disposed of.

7. Urgent certified copy of this order be granted on proper application.

PKS



(S. Pujahari)
Judge