

GAHC010135752023



2026:GAU-AS:4179

**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : Crl.Pet./634/2023**

BISWAJIT NAYAK AND 3 ORS  
SUSPENDED DIRECTOR OF NAYAK INFRASTRUCTURE 2ND FLOOR,  
KAMAKHYA COMMERCIAL, C.K. ROAD, PAN BAZAR, GUWAHATI-781001

2: SRI UMESH SENAPATI  
SUSPENDED DIRECTOR OF NAYAK INFRASTRUCTURE 2ND FLOOR  
KAMAKHYA COMMERCIAL  
C.K. ROAD  
PAN BAZAR, GUWAHATI-781001.

3: SRI ALOK KUMAR NAYAK  
SUSPENDED DIRECTOR OF NAYAK INFRASTRUCTURE 2ND FLOOR  
KAMAKHYA COMMERCIAL  
C.K. ROAD  
PAN BAZAR, GUWAHATI-781001.

4: RENU DEVI NAYAK  
SUSPENDED DIRECTOR OF NAYAK INFRASTRUCTURE 2ND FLOOR  
KAMAKHYA COMMERCIAL  
C.K. ROAD  
PAN BAZAR, GUWAHATI-781001

VERSUS

THE STATE OF ASSAM AND ANR  
REP. BY THE P, ASSAM

2:M/S TIRUPATI INTERNATIONAL  
A PROPRIETARY CONCERN HAVING ITS PLACE OF BUSINESS AT  
DEODUAR  
P.S. CHANGSARI  
N.H. 37  
DIST. KAMRUP, ASSAM  
AND OFFICE AT NIRMAL SAGAR APARTMENT

OLD POST OFFICE LANE  
A.K. AZAD ROAD  
REHABARI, GUWAHATI-781008  
DIST. KAMRUP (M)  
ASSAM BEING REP. BY ITS AUTHORIZED SIGNAORY/REPRESENTATIVE  
SRI AMAN SETHIA  
S/O SRI CHAMPALAL SETHIA  
R/O INFINITY SIGNATURE ESTATE  
B.K. KAKOTY ROAD  
ULUBARI, GUWAHATI-78100

**Advocate for the Petitioner** : MR S DAS, MR K DEKA

**Advocate for the Respondent** : PP, ASSAM, MR. K JAIN (R-2),MR. D K JAIN (R-2)

**BEFORE**  
**HON'BLE MRS. JUSTICE MITALI THAKURIA**  
ORDER

Date : 24.03.2026.

Heard Mr. S. Das, learned counsel for the petitioners. Also heard Mr. B. Sarma, learned Addl. P.P., Assam appearing on behalf of the State respondent and Mr. D.K. Jain, learned counsel appearing for the respondent No.2.

This is a petition filed under Section 482 of the CrPC, seeking for quashing of the criminal proceeding in C.R. Case No.68/2020, filed before the learned Judicial Magistrate First Class, Kamrup (M) at Guwahati.

It is submitted by Mr. Das, the learned counsel that the present accused petitioners are the Board of Directors of the M/s. Nayak Infrastructure Pvt. Ltd. (here-in-after referred to as 'the Company') and they are not associated nor involved in the day to day affairs of the said Company. He further submitted that from the plain reading of the complaint petition itself, it is not mentioned therein as to how the present petitioners who are the Directors of the company are

involved in the present case. He further submitted that it is the Managing Director of the company, namely, Ananta Charan Nayak is the responsible person who had issued the cheque in question under his seal and signature. The present petitioners who are the Directors of the company and they are not involved in the day to day affairs of the company. The learned counsel further submitted that as per Section 141 of the N.I. Act, every person of a company are responsible for the conduct of business of the company as well as the company shall be deemed to be guilty of the offence and shall be proceeded against and may be punished accordingly. But to make out a case against a company or all the Board of Directors, there has to be some involvement or the cheque in question has to be delivered in the day to day business affairs. But there is no mention at all as regards the involvement of the present accused petitioners who are the Directors of the Company. More so, at present the company is also defunct and there is no existence of the company and the NCLT Notice has also been served to the company. In the above circumstances, the present accused petitioners cannot be considered as guilty for the offence committed by one of the Managing Director of the company, who had issued the cheque in question.

Mr. Das, the learned counsel for the petitioners also relied on a decision of the Hon'ble Supreme Court rendered in the case of ***Susela Padmavathy Amma Vs. M/s Bharti Airtel Limited***, reported in ***2024 0 Supreme 173 (SC) 230***, wherein it has been observed that merely because a person is a director of a company, it is not necessary that he is aware about day-to-day functioning of company - Simply because a person is a director of the company, it does not necessarily mean that he fulfils twin requirements of Section 34(1) of the Act so as to make him liable – A person cannot be made liable unless, at the material time, he was

in-charge of and was also responsible to company for conduct of its business - There is no universal rule that a director of a company is in charge of its everyday affairs - To escape liability, they will have to prove that when offence was committed, they had no knowledge of offence or that they exercised all due diligence to prevent commission of offence - Merely reproducing words of the section without a clear statement of fact as to how and in what manner a director of company was responsible for conduct of business of company, would not ipso facto make the director vicariously liable - There is no averment to the effect that present appellant is in-charge of and responsible for day-to-day affairs of Company.

Citing the above referred judgment, it is submitted by Mr. Das, the learned counsel for the petitioners that the case of the petitioners is also covered by the order passed by the Apex Court and considering this aspect of the case, the criminal proceeding pending against the present accused petitioners before the learned Judicial Magistrate First Class, Kamrup (M) at Guwahati may be set aside and quashed, who are merely the Directors of the company.

Mr. Jain, the learned counsel for the respondent No.2 submitted in this regard that in the complaint case, only the averments have been made but the details has not been made in this case and at the time of taking cognizance, the learned Magistrate is to apply the judicial mind only to find out whether there is *prima facie* case for summoning the accused persons. The learned Magistrate does not require to evaluate the merits of all the materials or evidence in support of the complaint. In support his submission, Mr. Jain, the learned counsel relied on the decision of a Division Bench of the Hon'ble Apex Court rendered in the case of ***Sau. Kamalshivaji Pokarnekar vs. the State of***

**Maharashtra** and others, reported in **(2019) AIR (SC) 847**. Mr. Jain further submitted that, in the above referred judgment it is held in para 6 that:

*“6. Defences that may be available, or facts/aspects which when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At that stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not”.*

So at this stage, without examining any witness or without examining any witness, the present petition for quashing cannot be entertained in this case, where in the learned Magistrate took cognizance of the case only on the basis of the materials available and finding a *prima facie* case against all the petitioners.

Mr. Jain, the learned counsel for the respondent No.2 further submitted that cognizance of this case was taken in the year 2021 and at the time of taking cognizance, all the petitioners appeared before the learned Trial Court below but thereafter they remained absent and finding no other alternative, the learned Trial Court below also had to issue NBWA and P&A against the present petitioners who also misled this Court by giving their false addresses. He further submitted that the issue of moratorium against the company has already been taken into consideration by the learned Trial Court below and vide the order dated 20.10.2022, the prayer made by the accused company has been rejected with the observation that in view of the judgment passed by the Hon'ble Supreme Court in the case of ***P. Mohanraj and others vs. M/s. Shah Brothers Ispat Private Limited***, reported in **(2021) AIR (SC) 1308**, wherein it has been held that the Directors of a company are statutorily liable under Section 138 of

the N.I. Act and the moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 is only applicable to the corporate entity. In support of his submission, Mr. Jain, the learned counsel also relied upon the above decision of the Hon'ble Supreme Court. He accordingly submitted that there are sufficient *prima facie* materials against the accused petitioners who were the Directors of the company at the relevant point of incident and accordingly, they cannot abstain from the liability from the case and more so, without going into the merit of the case as well as the evidence, the case against the present petitioners cannot be quashed and set aside in this case.

Hearing the submissions of learned counsel for both sides, I have also perused the case record and the annexure filed along with the petition.

It is a fact that the petitioners are the Directors of the company and under Section 141 of the N.I. Act, they were made liable and accordingly, the case has been lodged against them under Section 138 of the N.I. Act. At the same time, it is also seen from the cheque in question that it was issued by one Managing Director in favour of the petitioners, which was dis-honoured due to insufficient fund. The admitted position is that all the petitioners were acting as Directors of the company and unless and until every details are brought before the Court, it is not possible on the part of the learned Magistrate as well as for this Court in regards to involvement of the present petitioners in the alleged offence.

The judgment, which is relied by the learned counsel for the petitioners is basically passed after recording the evidence and after completion of the trial. But here in the instant case, it is seen that in the very initial stage of taking cognizance, the petition for quashing has been filed and hence, it is not possible

to know the involvement of the present petitioners without recording the evidence or without proceeding with the trial. Further, it is seen that though the petitioners have filed the present petition, but they have absconding from the learned Trial Court below for which NBWA and P&A had to be issued against all of them, though the cognizance of the case was taken in the year 2021. To know the involvement of the present petitioners, there has to be some sort of evidence to be recorded and it is seen that the learned Trial Court committed no error or mistake while taking cognizance against the present petitioners, finding a *prima facie* case against them who were the Directors of the company at the relevant time of incident. However, the petitioners will get a chance to place before the learned Trial Court in regards to the defunct status of the company etc. but *prima facie* it is seen that there are sufficient materials to take cognizance against the present petitioners who were the Directors of the company.

In view of the above and considering all aspects of this case, this Court is of the opinion that it is not a fit case to quash or set aside the entire criminal proceeding against the present accused petitioners by invoking the inherent power under Section 482 of the CrPC at this stage.

Accordingly, this criminal petition stands dismissed.

JUDGE

**Comparing Assistant**