



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2313 of 2022

Suraj Prakash Pattnaik & Petitioners
another

Mr. S. Mohanty, Advocate

-versus-

Neelam Pattjoshi Opp. Party

Mr. M.K. Chand, Advocate

CORAM:

THE HON'BLE MR. JUSTICE CHITTARANJAN DASH

ORDER

20.08.2025

Order No.

04. 1. Heard learned counsel for the Parties.
2. By means of this application the Petitioners seek to quash proceeding under Section 138 of the N.I. Act pending before the learned S.D.J.M, Bhawanipatna in ICC Case No.51 of 2021.
3. The background facts of the case are that Petitioner No.1, along with his father, Petitioner No.2, who had good relations with the complainant, approached her to purchase a piece of land measuring Ac.0.255 dec. under Mouza—Paramanandapur, pertaining to Khata No.171/1156 and bearing Plot No.355/2408, in order to meet their financial



necessities and repay debts. The complainant agreed to the proposal of the Petitioners and expressed her intention to purchase the said land. Accordingly, the consideration amount was fixed at ₹1,42,50,000/- (Rupees One Crore Forty-Two Lakhs Fifty Thousand only). An agreement was executed between the complainant and Petitioner No.2 on 03.03.2021, whereupon the complainant paid an advance of ₹5,00,001/- (Rupees Five Lakhs and One only) through cheque No.400642 dated 03.03.2021, drawn on Indian Overseas Bank, Bhawanipatna. On the very same day, in the presence of Petitioner No.1, the agreement was executed and attested before the Notary Public. Petitioner No.2 also executed an acknowledgement admitting receipt of ₹5,00,001/-, and Petitioner No.1 signed as an attesting witness.

Subsequently, on 17.03.2021, both the Petitioners again approached the complainant and her husband seeking further part payment. Accordingly, a sum of ₹10,00,001/- (Rupees Ten Lakhs and One only) was paid in cash by the complainant to Petitioner No.2 in the presence of Petitioner No.1. On the same day, Petitioner No.2 executed another acknowledgement admitting receipt of ₹10,00,001/-, duly attested before the Notary Public, in which Petitioner No.1 again signed as an attesting witness. Upon entering into such agreement and parting with the advance towards consideration, the complainant also invested a further sum of ₹1,20,000/-



(Rupees One Lakh Twenty Thousand only) for development of the land by filling soil.

Thereafter, the complainant discovered that Petitioner No.2 was not the actual owner of the land in question and that the RoR had been fraudulently obtained by him. Upon further inquiry, the complainant came to know that one Harendra Prasad Sahu was the actual owner of the land, having purchased it from the grandfather of Petitioner No.1 in 1989. Thereafter, the complainant and the Petitioners agreed to rescind the contract dated 03.03.2021, and accordingly, Petitioner No.2 refunded a sum of ₹7,00,000/- (Rupees Seven Lakhs only) on 12.05.2021. On the same day, Petitioner No.2 entered into another written agreement with the complainant, agreeing to refund the balance amount of ₹8,00,000/- (Rupees Eight Lakhs only) along with the development cost of ₹1,20,000/- (Rupees One Lakh Twenty Thousand only) on or before 05.08.2021. For repayment of the said amount, Petitioner No.1 issued a post-dated cheque bearing No.647842 dated 05.08.2021 in favour of the complainant.

After the due date mentioned on the cheque, the Petitioners requested the complainant not to present it, assuring that payment would be arranged. In the meantime, despite repeated approaches by the complainant, the Petitioners avoided repayment. Ultimately, at the instance of the Petitioners, the cheque was presented by the complainant



through his banker (A/c No.070701000019272, Indian Overseas Bank, Bhawanipatna) on 14.10.2021, but it was dishonoured due to “Funds Insufficient.” On receiving intimation from the bank on 16.10.2021, the complainant issued a statutory notice on 13.11.2021 by Registered Post demanding payment. Though the notice was duly served on Petitioner No.1 on 15.11.2021, no payment was made within the statutory period. The complainant thereafter filed a complaint within the prescribed time, whereupon the learned court took cognizance of the offence under Section 138 N.I. Act and issued process directing the Petitioners to appear. The Petitioners, being aggrieved by the said order, have approached this Court, inter alia, on the grounds that Petitioner No.2 has no liability, inasmuch as he is neither a signatory to the cheque nor otherwise connected with the transaction under the Negotiable Instruments Act. The complaint has also been assailed on the ground that it is not accompanied by an affidavit in compliance with the mandate of the Hon’ble Supreme Court in ***Priyanka Srivastava v. State of U.P.***, (2015) 6 SCC 287.

4. Mr. Chand, learned counsel for the Opposite Party, vehemently opposed the contentions raised by the learned counsel for the Petitioner and submitted that the affidavit alleged to have not been accompanied with the complaint is a curable defect and is also not mandatory for the purpose of a



complaint under Section 138 of the N.I. Act. In the absence of any other ground, the cognizance taken by the learned court is not liable to be interfered with in any manner. As seen from the case record, the challenge of the Petitioner is confined only to the fact that Petitioner No.2, the father of Petitioner No.1, has no nexus whatsoever with the issuance of the cheque. There is also no material to implicate him as being a partner in such transactions so as to attract liability under Section 142 of the N.I. Act.

However, the issuance of the cheque from the account of Petitioner No.1 under his own signature does not in any manner embroil Petitioner No.2, nor render him liable for the offence under which the cheque was issued by Petitioner No.1 in favour of the complainant.

5. Having gone through the record and hearing the counsels for both the parties, the cognizance taken by the learned Court insofar as it implicates Petitioner No.2 is found to be unsustainable in law, there being no material to connect him with the issuance of the cheque in question. The same, therefore, deserves to be quashed.

6. With regard to the challenge to the cognizance under Section 138 of the N.I. Act on the ground that the complaint was not accompanied by an affidavit, this Court is of the considered view that the ratio in ***Priyanka Srivastava*** (supra)



does not mandate the filing of an affidavit along with the complaint in an offence under Section 138 of the N.I. Act. Nonetheless, there is no impediment for the complainant to furnish such an affidavit. The contention of learned counsel for the Petitioner that an affidavit cannot be furnished subsequent to the issuance of process is of no consequence, inasmuch as the very object of requiring an affidavit is to ensure that the complainant does not put forth any fact which may otherwise be found incorrect when the Court, at the stage of taking cognizance, is not in a position to verify the same.

7. The legal position has been clarified in the recent decision of the Hon'ble Apex Court in ***S.N. Vijayalakshmi & Ors. Vs. State of Karnataka & Anr.***, reported in **2025 INSC 917**, where the Court distilled and reaffirmed the binding nature of ***Priyanka Srivastava (Supra)***. While holding that the affidavit requirement is a mandatory precondition for invoking the jurisdiction of the Magistrate under Section 156(3), the Court also clarified that the defect is curable, provided it is rectified before the Magistrate passes any substantive order on the complaint. It is held as follows:

“45. The High Court has taken a view that this is a curable defect since before the referral order on the PCR by the ACMM for registering an FIR under Section 156(3) of the CrPC, the required formalities were done. In our considered opinion, this approach cannot be labelled erroneous. The requirement under Priyanka Srivastava (supra) is to safeguard the rights



of the citizenry and to put a stop to unjust criminal action and filing of vexatious applications to settle personal scores. Thus, such requirement could not be said to be a mere formality. One of us (Sudhanshu Dhulia, J.) as a Single Judge of the Uttarakhand High Court, in *Sachin Chamoli v State of Uttarakhand*, 2016 (3) NCC 68, where no affidavit had been filed, held that filing of affidavit was a mandatory requirement as per *Priyanka Srivastava* (supra). In *Babu Venkatesh v State of Karnataka*, (2022) 5 SCC 639, this Court held that the Magistrate concerned should not have entertained the complaint/application under Section 156(3) of the CrPC therein, as it was not supported by an affidavit. In the case at hand, before the ACMM passed the referral order, the complaint was backed by an affidavit. In *Ramesh Kumar Bung v State of Telangana*, 2024 SCC OnLine SC 264, the Court, while stating that the directions in *Priyanka Srivastava* (supra) are mandatory, declined to interfere with the order(s) impugned therein, but noted that the informant had filed the affidavit belatedly. To complete the discussion on this aspect of the law, we may also refer to our judgment in *Kanishk Sinha v State of West Bengal*, 2025 SCC OnLine SC 443 where, speaking through Sudhanshu Dhulia, J., this Court upheld an order of the Calcutta High Court, to the effect that the direction in *Priyanka Srivastava* (supra) to file the affidavit, was prospective in nature. Therefore, if after the filing of the complaint/application but before any order thereon is passed, such requirement is allowed to be fulfilled/complied with by the complainant, it would not, in our view, run counter to the law expounded in *Priyanka Srivastava* (supra). We sum up our conclusions on this score as follows:

- (i) Directions issued in *Priyanka Srivastava* (supra) are mandatory;
- (ii) Guidelines laid down in *Priyanka Srivastava* (supra) operate prospectively;



(iii) Non-filing of the supporting affidavit is a curable defect, but must be cured before the Magistrate passes any substantive order on the complaint/application, and;

(iv) If the Magistrate proceeds without the requisite affidavit, such order/any consequential orders/proceedings can be quashed on the sole ground of non-compliance with Priyanka Srivastava (supra)."

8. The object of insisting on an affidavit is only to ensure that the complainant affirms the truth of the allegations and does not invoke criminal process on unverified assertions. In the present case, therefore, the absence of an affidavit at the initial stage does not ipso facto vitiate the proceedings under Section 138 of the N.I. Act. In the absence of any other ground to assail the cognizance, this Court is not persuaded to interfere with the same. Nonetheless, as a matter of abundant precaution, the complainant is at liberty to furnish an affidavit before the learned Court below.

9. In the result, as already discussed, the cognizance taken by the learned Court against Petitioner No.2 is found to be unsustainable in law and accordingly stands quashed. The CRLMC is partly allowed to the extent indicated above. There'll be no order as to costs.

(Chittaranjan Dash)
Judge

Sarbani

Page 8 of 8

