

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLMC No.2244 of 2022**

**Sri Harihar Mishra and Another** .... **Petitioners**  
Mr. Bansidhar Baug, Advocate

-Versus-

**M/s. Acrux Realcon Pvt. Ltd.** .... **Opposite Party**  
Mr. Swapna Kumar Ojha, Advocate for sole opposite party

**CRLMC No.2245 of 2022**

**Sri Harihar Mishra and Another** .... **Petitioners**  
Mr. Bansidhar Baug, Advocate

-Versus-

**M/s. Acrux Realcon Pvt. Ltd.** .... **Opposite Party**  
Mr. Swapna Kumar Ojha, Advocate for sole opposite party

**CORAM:**  
**JUSTICE R.K. PATTANAİK**

**DATE OF JUDGMENT:29.03.2023**

1. Invoking this Court's inherent jurisdiction, the petitioner has challenged the correctness, legality and judicial propriety of the impugned orders dated 6<sup>th</sup> August, 2022 under Annexure-5 passed in ICC Case Nos.2011 and 1560 of 2019 by the learned J.M.F.C., Bhubaneswar on the grounds inter alia that the same are not tenable in law and hence, therefore, liable to be interfered with and quashed in the interest of justice.

2. The opposite party filed the complaints before the learned court below after the cheques said to have been issued by the  
CRLMC Nos.2244 & 2445 of 2022

Sri Harihar Mishra and Another Vrs. M/s. Acrux Realcon Pvt. Ltd.

petitioners stood dishonored due to insufficiency of fund. It is made to appear that the complaints supported by affidavits were filed by the opposite party, considering which, the learned S.D.J.M., Bhubaneswar took cognizance of the offence under Section 138 of the N.I. Act and thereafter, summoned the petitioner. At the commencement of trial, evidence in the shape of affidavits as at Annexure-3 were filed which was objected to by the petitioner on the ground that it cannot be accepted as the opposite party has already filed affidavits basing upon which the court proceeded and has taken cognizance of the offence under Section 138 of the N.I. Act. In fact, affidavits were filed with the complaints and thereafter, the learned court below recorded the initial statements of the representative of the opposite party and after receiving such evidence took cognizance of the offence under Section 138 of the N.I. Act. While the trial to begin, the opposite party filed the affidavits as evidence which was opposed by the petitioner on the ground that the same is not permissible in law.

3. Heard Mr. Baug, learned counsel for the petitioner and Mr. Ojha, learned counsel for the opposite party.

4. Mr. Baug, learned counsel for the petitioner submits that such filling of affidavits for the second time is not acceptable and learned court below could not have received it, when initially the complaints were filed with affidavits. In fact, the learned court below rejected the applications of the petitioner on the ground that the initial affidavits were received for and at the time of taking cognizance of the offence and thereafter, the affidavits by way of evidence were filed which is in conformity with Section 145 of the N.I. Act. Mr. Baug, learned counsel for the petitioners cited the following decisions, such as, **Indian Bank Association and Others Vrs. Union of India and Others (2014) 5 SCC 590;** CRLMC No.2244 & 2245 of 2022

Sri Harihar Mishra and Another Vrs. M/s. Acrux Realcon Pvt. Ltd.

**Mandvi Cooperative Bank Limited Vrs. Nimesh b. Thakore (2010) 3 SCC 83; Meters and Instruments Private Limited and Another Vrs. Kanchan Mehta (2018) 1 SCC 560; Vikas Sharma Vrs. Vishant Bali 2020 SCC Online HP 2876; K.S. Joseph Vrs. Philips Carbon Black Limited and Another (2016) 11 SCC 105 and In Ref: Expeditious Trial of Cases Under section 138 of the N.I. Act, 1881 in Suo Motu Writ Petition (Crl.) No.2 of 2020 reported in AIR 2021 SC 1957** to contend that the learned court below cannot and could not have received the second lot of affidavits filed by the opposite party as affidavits along with the complaints had already been filed at the beginning. Mr. Ojha, learned counsel for the opposite party, on the other hand, justified the impugned orders contending that the affidavits have been filed as evidence and the court below accepted it which is nothing to do with the initial affidavits which were submitted with the complaints while seeking an action against the petitioner.

5. In **Indian Bank Association** (supra), the Supreme Court held that Section 145 of the N.I. Act provides complete freedom to the complainant either to give his evidence by way of affidavit or by oral means and the court has to accept the same even if it is in the form of an affidavit. It is also observed therein that the second part of Section 145(1) of the N.I. Act provides that the complainant's statement on affidavit may, subject to all just exceptions, be read in evidence in any inquiry, trial or other proceedings, referring to which, Mr. Baug, learned counsel for the petitioner submits that since affidavits are already on record file with the complaints, the second string of affidavits could not have been accepted. In the said decision, it has been further observed that the affidavit and documents filed along with complaint for taking cognizance of the offence are good enough to be read as evidence at both the pre-summoning and post-summoning stages.

Sri Harihar Mishra and Another Vrs. M/s. Acrux Realcon Pvt. Ltd.

Laying much emphasis on the above, Mr. Baug submits that as the complaints have been filed along with affidavits, only the said affidavits are to be considered by the learned court below as the evidence during trial and therefore, second affidavits ought not to have been entertained and accepted. If the decision (supra) is read and understood, it does mean that affidavit which is filed along with the complaint for taking cognizance of the offence may be read as evidence later on during enquiry and trial. It is no authority to say that an affidavit filed at the initial stage along with complaint debars the complainant from filing affidavit evidence. Section 145 of the N.I. Act deals with the affidavit evidence and it stipulates that the evidence of the complainant may be given by way of affidavit and may, subject exceptions, be read in evidence in any enquiry, trial or other proceedings under the Code of Criminal Procedure, 1973. By virtue of Section 145 of the N.I. Act, affidavit evidence is to be received by the court notwithstanding anything contained the Code of Criminal Procedure and the same shall be accepted at any stage and may also be used and read in evidence during trial or other proceedings. In the event, any such affidavit is received either from the prosecution or the defence as per Sub-section (2) of Section 145 of the N.I. Act, the court may and mandatorily on the application of respective parties summon the person who filed it for the purpose of cross-examination.

6. In the instant case, the complaints were filed along with affidavits which is not in dispute but Mr. Baug, learned counsel for the petitioner submits that since there is already affidavits received along with the complaints by the learned court below, second affidavits as evidence should not have been accepted. The Court is not in agreement with such a contention of Mr. Baug. The initial affidavits if at all received by the learned court below

Sri Harihar Mishra and Another Vrs. M/s. Acrux Realcon Pvt. Ltd.

along with the complaints, it was and may be said to be for a limited purpose to set the criminal action into motion and thereafter, at the stage of trial any such affidavit so furnished in the shape of evidence is to be entertained as it does not debar the court from accepting it. According to the Court, it is one thing to say that an affidavit filed and received by the court initially may be treated as evidence and is good enough for the purpose of trial and altogether different to claim that affidavit evidence in terms of Section 145 of the N.I. Act, if it is filed by the complainant despite an affidavit submitted along with complaint, the same cannot be accepted since there is already an affidavit on record. The authority and other decisions placed reliance on Mr. Baug, learned counsel for the petitioner do not subscribe any such view that the complainant is absolutely debarred from filing any such affidavit evidence for the reason that the complaint was filed along with an affidavit which may be used and utilized during enquiry and trial. Without elaborating further, the Court is of the irresistible conclusion that the learned court below did not commit any error or illegality in rejecting the plea of the petitioner vide the impugned orders under Annexure-5.

7. Accordingly, it is ordered.

8. In the result, the CRLMCs stand dismissed for the reasons discussed herein above.

**(R.K. Pattanaik)**  
Judge