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IN THE HIGH COURT OF ORISSA, CUTTACK

TRPCRL No.58 of 2025

Sangram Keshari Routray Petitioner

-Versus-

Hexagon Infrastructures
Private Ltd., Cuttack &
Anr. Opposite Parties

Advocate for the parties

**For Petitioner : Mr. H.S. Mishra
Advocate**

**Mrs. R. Nayak,
Advocate**

For Opposite Parties : None

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CORAM: JUSTICE SANJAY KUMAR MISHRA

Date of Hearing and Judgment : 30.07.2025

S.K. MISHRA, J.

1. This transfer petition has been filed under Section 447 of the Bharatiya Nagarika Surakhya Sanhita, 2023, shortly, "BNSS", by the Petitioner, who is the Complainant in 1CC Case No.172 of 2024, which is now pending in the Court



of learned JMFC-II, Cuttack, for transfer of the said proceeding to the Court of learned JMFC-IV, Bhubaneswar.

2. Learned Counsel for the Petitioner submits, the cheque was issued by the Accused, drawn on IndusInd Bank, Cuttack Chandi Road Branch, Cuttack. The same was deposited by the Petitioner, who is the Complainant in 1CC Case No.172 of 2024, in his Bank Branch at Bhubaneswar i.e. IndusInd Bank, Lewis Road Branch, Bhubaneswar. The said cheque was dishonoured and returned to him vide Cheque Return Memo dated 23.10.2024 with a noting “Drawers signature not as per mandate in the account”.

3. Learned Counsel for the Petitioner further submits, though in terms of sub-section 2 under section 142 of the Negotiable Instruments Act, 1881, shortly hereinafter, “the N.I. Act”, the complaint case ought to have been filed before the Court having jurisdiction at Bhubaneswar, on being advised by the learned Counsel for the Complainant, who gave notice under section 138 (b) of the N.I. Act from Cuttack, the complaint case was wrongly filed before the Court of learned JMFC-II, Cuttack.



4. Though it has not been pleaded in the transfer petition, learned Counsel for the Petitioner further submits, the post of JMFC-II, Cuttack is lying vacant as the PO has been transferred. Now the PO, JMFC-III, Cuttack is in charge of the said Court.

5. Learned Counsel for the Petitioner submits, the Magistrate, who is in charge of the Court of JMFC-II, Cuttack, cannot pass any order for transfer of proceeding in 1CC Case No.172 of 2024 to the Court having jurisdiction to try the said complaint. Unless this Court passes appropriate order to transfer the case record in 1CC Case No.172 of 2024 to the Court at Bhubaneswar having jurisdiction, the Petitioner will be seriously prejudiced. If the Petitioner withdraws the said Complaint Case and files a fresh complaint case before the Magistrate having power at Bhubaneswar, there is every possibility that the said Court may not entertain the same on the ground of limitation, as prescribed under Section 142(1)(b) of the N.I. Act.

6. Accordingly, a prayer is made to direct the learned JMFC-II, Cuttack to transmit the case record in 1CC Case



No.172 of 2024 to the Court of learned JMFC-IV, Bhubaneswar.

7. In view of such submission made, it would be apt to reproduce below the provisions under Sub section (2) of section 142 of the N.I.Act :

“2. The offence under section 138 shall be inquired into and tried only by a Court within whose local jurisdiction, -

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated;
or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation- For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.”

(Emphasis supplied)

8. It is amply clear from Section 142(2)(a) of the N.I. Act that, when a cheque is delivered for collection to the



payee's bank account, the relevant jurisdiction for filing a case under Section 138 of the N.I. Act would be where the payee's bank branch, where the account is maintained, is situated. Similarly, Section 142(2)(b) of the N.I. Act applies when the cheque is presented for payment directly to the bank (not through an account, possibly over the counter), the relevant jurisdiction would be where the drawer's bank branch, where the account is maintained, is located. In simpler terms, if a person deposits the cheque in his bank account and the said cheque is bounced, he can file the case where his bank is located. If the said person presents the cheque directly to the bank for payment and the said cheque is dishonoured, he can file the case where the other person's bank, who issued the cheque, is located.

9. In view of the provision enshrined under Section 142(2) of the N.I. Act so also facts detailed in the transfer petition, admittedly, the appropriate Court to try the complaint case filed by the Petitioner would be at Bhubaneswar. However, it appears from the record that the Petitioner, who is the payee of the cheque, which has been dishonoured, has wrongly instituted the said Complaint Case



at Cuttack in the Court of learned JMFC-II, Cuttack, who is incompetent to take cognizance in 1CC Case No.172 of 2024, having no territorial jurisdiction to try the said offence under Section 138 of the N.I. Act.

10. Accordingly, this transfer petition has been filed for transfer of proceeding from Cuttack to the Court at Bhubaneswar on the ground of lack of territorial jurisdiction. In a recent judgment in ***M/s Shri Sendhur Agro & Oil Industries Vs. Kotak Mahindra Bank Ltd.***, reported in 2025 LiveLaw (SC) 292, the Supreme Court held that an order of transfer of trial is not to be passed as a matter of routine, more particularly, on the plea of lack of territorial jurisdiction of the Court to try the offence under section 138 of the N.I. Act. The power to transfer proceeding has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide credibility to the trial.

11. Section 224 of the BNSS mandates, if a complaint is made to a Magistrate, who is not competent to take cognizance of an offence, he shall, if the complaint is in writing, return it for prosecution before the proper Court with an endorsement to that effect.



12. In view of the said specific provision under section 224 of the BNSS, which is akin to Section 201 of Cr.P.C., this Court is of the view that the present Petitioner, who is the Complainant in 1CC Case No.172 of 2024, instead of filing an application under Section 447 of BNSS before this Court for transfer of proceeding, should have moved appropriate application before the Court of learned JMFC-II, Cuttack for return of the complaint, with proper endorsement, enabling him to re-file the same before the Court having jurisdiction at Bhubaneswar. Such view of this Court is also supported with the views taken by the Supreme Court in **Canbank Financial Services Vs. Pallav Sheth**, reported in 2001 (Suppl.) ACC 936 : Manu/SC/1987/2001, wherein it was held that once the Court comes to a conclusion that it has no jurisdiction to decide the complaint, by virtue of Section 201 of Cr.P.C., the complaint should be returned to the complainant, to be presented in the proper Court having jurisdiction to try the said case.

13. In view of the observation made above, the Petitioner, who is the complainant in 1CC Case No.172 of 2024, may move an application before the Court of learned



JMFC-II, Cuttack in 1CC Case No.172 of 2024 for return of the complaint enabling him to file the same before the appropriate Court having jurisdiction at Bhubaneswar.

14. If such an application is moved, learned JMFC-II, Cuttack or the Magistrate, who is in charge of the said Court, shall do well to return the complaint to the Petitioner-Complainant forthwith with proper endorsement, in terms of provision enshrined under section 224(a) of the BNSS, enabling the Petitioner to re-file the said complaint case before the appropriate Court at Bhubaneswar, having jurisdiction to try the said complaint case.

15. With the above observation, the transfer petition stands disposed of.

16. Urgent certified copy of this order be granted on proper application as per rules.

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S.K. MISHRA, J.

*Orissa High Court, Cuttack.
Dated, 30th July, 2025/ Banita*