COURT FEE Rs.10 TEN RUPEES · COURT FEE Rs.2 TWO RUPEES · COURT FEE Rs.2 TWO RUPEES · COURT FEE ONE RUPEE

(3) (6)

**In the High Court of Chhattisgarh at Bilaspur**

Criminal Misc. Petition No. 342 of 2014 Single Bench

Petitioner : Shreedeo Industries, through its partner Rahul Agrawal, Son of Shri Govindram Agrawal, aged about 37 years. Badaipara, Raipur, P.S.H. Azad Chowk, Raipur, Tahsil and District Raipur, Chhattisgarh.

Versus

Respondents :

1. Suryachakra Global Enviro Power Ltd.
2. Dr. Manepalli, Chairman, Suryachakra Global Enviro Power Ltd.
3. Sheshu, (Sheshnarayan), Managing Director, Suryachakra Global Enviro Power Ltd.

Addresses of Nos.1 to 3 : Suryachakra House, Plot No.304-L-3, Road No.78, Jubilee Hills, Hyderabad 500033, A.P.

4. Rajesh, Director, Suryachakra Global Enviro Power Ltd.
5. J.K. Rao, the then General Manager, Suryachakra Global Enviro Power Ltd.

Addresses of Nos.4 & 5 :
House No.43, Aishwarya Residency, G.E. Road, Raipur.

6. Mahamaya Coal Traders, Proprietor Satya Narayan
7. Satya Narayan, Proprietor, Mahamaya Coal Traders

Addresses of Nos.6 & 7 : Suryachakra House, Plot No.304-L-3, Road No.78, Jubilee Hills, Hyderabad 500033, A.P.

8. The Station House Officer, Azad Chowk Police Chowki, Raipur, Tahsil and District Raipur, Chhattisgarh.
9. The State of Chhattisgarh. through District magistrate — Raipur (C.G.)

342/14 Maved Pubey 10/4/14

**Application under section 482 Cr.P.C.**

(Arising out of order dated 29-11-2013 passed in Criminal Revision No.292 of 2013 by the First Additional Sessions Judge, Raipur, upholding the order dated 24-07-2013 passed in unregistered criminal case of 2012, (marked as "112400/2/80-2012" in the opening order-sheet for identification purposes), by Smt. Sushma Lakada, Magistrate First Class, Raipur) Annexure A-19

Annexure A-20

15-4-14

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.M.P. No. 342 of 2014

Petitioner : Shreedeo Industries

VERSUS

Respondents : Suryachakra Global Enviro Power Ltd. & Others

PETITION U/S. 482 OF THE CODE OF CRIMINAL PROCEDURE

**SB: Hon'ble Shri Goutam Bhaduri, J.**

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Present: Shri Manoj Kumar Dubey, Advocate for the petitioner.
Shri Gary Mukhopadhyay, Panel Lawyer for the State.

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## ORDER

(Passed on 21st day of April, 2014)

1. This petition is preferred against the order dated 29.11.2013, passed by the learned First Additional Sessions Judge, Raipur, in Criminal Revision No.292/2013, whereby the order dated 24.07.2013 passed by the Judicial Magistrate First Class, Raipur, was upheld.

2. The brief facts of this case is that the petitioner was in business transaction with the respondents No.1 to 7 and according to the petitioner, an amount of Rs. 62 Lacs was found due against the respondents, which was acknowledged by them in writing by the sister concern of the respondents. Subsequently, two cheques amounting to Rs. 51 Lacs & Rs. 11 Lacs were delivered to the petitioner on 05.08.2011 and when the cheques were deposited that was dishonored. According to the petitioner, when the said dishonor of the cheque was informed to the respondents, they pleaded for time to comply the same and some how or the other got the legal action postponed. Therefore, it is case of the petitioner that a report was made to the Superintendent of Police with a copy to the SHO, Azad Chowk, as according to the petitioner, conspiracy and fraud was committed, which was punishable under Section 120-B & 420 of IPC.

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3. Thereafter, the petitioner filed an application under Section 156(3) of Cr.P.C. before the Judicial Magistrate, Raipur. The Judicial Magistrate, after examination it, found that the matter was with respect to the dishonour of cheque. The learned Court below, after examining the same, came to the conclusion that the matter was with respect to the commercial transaction in between the petitioner and the respondents for last 4-5 years and out of that ultimately an amount was outstanding. To liquidate the same, the cheques were issued. Thereafter, the said cheques were deposited in the Bank and the same was dishonoured and ultimately held that no case was made out and dismissed the application so preferred. Therefore, the petitioner further submits that the respondents No.1 to 7 have committed a criminal conspiracy and criminal breach of trust & fraud.

4. The learned Court below, after examination of the entire records, came to conclusion that the Court did not found to take cognizance under Sections 120-B, 420, 468 & 409 of IPC and ultimately, it was dismissed. After the matter was dismissed by the learned Court below, the matter was taken up in revision before the Court of Additional District Judge, Raipur, which was registered as Criminal Revision No.292/2013. The revisional Court after examination of the record found that the trial Court on 11.12.2012, after the application was filed, sent a memo to the Azad Chowk, Police Station, Raipur and an enquiry was made. In response to such enquiry, a report was submitted on 14.01.2013 wherein it was informed that the transaction between the petitioner and the respondents was in commercial nature and no fraud was committed to receive the goods, which were alleged to have been supplied by the petitioner. It was also found in such enquiry that the respondents have paid an amount of Rs.16 Lacs to the petitioner. Therefore, conclusively, it was found that the case of cheating was not made out instead the case may be made out under Section 138 of Negotiable Instrument Act.

5. The revisional Court by its order dated 29.11.2013 came to the conclusion that the learned trial Court had came to conclusion that the case of cheating is not made out instead the matter was within the domain and sweep of Section 138 of Negotiable Instrument Act for which different statutory remedy is provided and, as such, the revisional Court had held that the order of trial Court to not to take cognizance under Section 156(3) was valid.

6. I have gone through both the orders of the Courts below i.e. trial Court as also the revisional Court. After examination of the same *prima facie* it appears that the transaction *inter se* between the petitioner and the respondents No.1 to 7 was in nature of commercial transaction. It also purports that some materials were supplied by the petitioner to the respondents and against which the amount was outstanding. In order to discharge the liability few cheques were issued. The cheques however when were deposited in Bank got dishonoured. Thereafter, some part of amount was paid. Therefore, it is obvious that if the cheques have been dishonored, in such eventuality, the petitioner should have taken recourse to Section 138 of Negotiable Instrument Act. Instead, filing of application before the Court below under Section 156(3) of Cr.P.C. may not be a proper remedy. The learned Court below further ordered for an enquiry. Thereafter, have came to conclusion that the proceedings cannot be further prosecuted with a finding of fact that it was a commercial transaction and no cheating was committed.

7. Therefore, after examination of records placed before me, I am of the considered opinion, considering the documents on record which is filed along with the petition, the nature of the allegations which is being projected is of dishonour of cheque for which the petitioner has other remedies open either to follow the special procedure under the Negotiable Instrument Act and also to go for a recovery in a civil suit. Section 156(3)

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of Cr.P.C. cannot be made instrumental for recovery of monetary dues and is a substitute to the civil suit and proceeding under Section 138 of Negotiable Instrument Act.

8. After going through the orders, the finding of fact which is on record by the learned Court below cannot be held as illegal. Therefore, I am of the considered opinion that this is not a fit case to exercise the extra ordinary jurisdiction of this Court under Section 482 of Cr.P.C. to entertain the petition.

9. Accordingly, the petition is summarily rejected.

Sd/-
**Goutam Bhaduri**
**Judge**

Aks