

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 536 of 2014**

Ram Kumar Soni, S/o. Komal Prasad, Aged about 55 years, R/o. Bajrang Nagar, Nayapara, Durg, Civil & Revenue District Durg (C.G.).

---- Petitioner

Versus

Sudhir Kumar Jain, S/o. Champa Lal Jain, Aged about 45 years, R/o. Akash Ganga, Supela, Bhilai, Tahsil & District Durg (C.G.).

---- Respondent

For Petitioner	:	Dr. Kumaresh Tiwari, Advocate.
For Respondent	:	None

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****10.09.2015**

1. Heard on admission.
2. The original records of the complaint cases were called for and the same are received.
3. This petition is against the order dated 16.05.2014 passed in Criminal Revision No.84/2014 & 94/2014 by the Court of First Additional Session Judge, Durg. By such order, two revision petitions were decided in respect of two criminal complaint filed under Section 138 of Negotiable Instrument Act, which were numbered as Complaint Case No.1334/2011 & 1024/2011 in between Sudhir Kumar Jain and Ram Kumar Soni.
4. The brief facts of the case are that the respondent Sudhir Kumar Jain had preferred two separate complaint under Section 138 of Negotiable Instrument Act on 19.08.2008 and on 12.11.2008. After registration of case after some time, both the complaint case were tried together from 19.04.2011 and were

being tried simultaneously on some dates. On 25.03.2014 both the cases were fixed for cross examination of the complainant and on that date the petitioner appeared before the Court and prayed for time for further cross examination, however, the prayer was rejected. Therefore, the same was subject of challenge before the Additional Session Judge in criminal revision. Both the revisions were heard together and were dismissed by the common order dated 16.05.2014. Hence this petition.

5. Learned counsel for the petitioner would submit that both the complaint case were fixed before the Court below on 14.03.2014 wherein the petitioner accused had noted the date to be 25.04.2014, however, before the date of 25.04.2014 the case was taken up and on 25.03.2014 and the orders were passed preponing the dates in absence of accused/petitioner and right to cross examine the complainant was closed. It is therefore contended that right to cross examination to the applicant should have been afforded to the applicant. It is further contended that in facts of the case the direction to commence proceeding under Section 193 of Cr.P.C. should also be set aside.
6. The original records of both the complaint case were requisitioned by this Court. The order sheet of both the complaint case bearing No.1334/2011 and 1024/2011 were perused.
7. Reading of case file separately shows that the complaint case bearing No.1334/2011 was filed on 19.08.2008 under Section 138 of the Negotiable Instrument Act. The Court on that date issued summons to the petitioner/accused and subsequent thereto the petitioner/ accused appeared on 11.05.2010 and obtained bail.
8. Likewise, the complaint case No.1024/2011 was filed on 12.11.2008 and on that date the summons having issued, the accused subsequently appeared and was granted bail on 10.02.2011. Subsequent to such appearance, the

complainant on different date appeared but examination could not be conducted for some reason or other. Both the complaint case thereafter were tried together from 19.04.2011.

9. Perusal of the record of the complaint case No.1334/2011 would reveal that right to cross-examination of complainant by accused/applicant was closed by the Judicial Magistrate on 25.03.2014. The records would show that the complaint case No.1334/2011 was filed on 19.08.2008. Thereafter, the charges were framed on 01.12.2010 and the case was fixed for evidence on 03.01.2011. On 03.01.2011, at the request of the petitioner/accused, the case was adjourned for cross-examination of complainant to 02.02.2011. Subsequently, the case was adjourned for compromise on different dates and on 28.10.2013 an affidavit was filed by the complainant and again the case was fixed for cross-examination on 27.11.2013. Thereafter, the case was adjourned from time to time.
10. On 22.02.2014, the accused/petitioner was present and time was sought to cross-examine the complainant and the case was fixed for 01.03.2014. On 01.03.2014, again time was sought by the complainant and the case was fixed for 11.03.2014. On 11.03.2014 also, another application was filed to provide time to cross-examine, which was allowed and the case was fixed for 14.03.2014. On 14.03.2014, again time was sought to cross-examine the complainant and the case was fixed for 25.03.2014. Though in the order sheet, the signature of R.K. Soni appears wherein the date is noted as 24.04.2014; whereas, the another signature appears which shows the date noted to be 25.03.2014. The order sheet shows that case was fixed for 25.03.2014.
11. Likewise, complainant case No.1024/2011 was filed on 12.11.2008, wherein the applicant appeared on 10.02.2011 and obtained bail. In this case too, on 22.02.2014, when the case was fixed for cross-examination, time was sought

by the applicant, which was allowed and the case was fixed for 11.03.2014. On 11.03.2014 again time was sought by the applicant stating that his counsel is busy in another court, therefore, the complainant could not be cross-examined and the case was fixed for 14.03.2014.

12. Perusal of the order sheet of complaint case No.1024/2011 would show that on 14.03.2014, the case was adjourned on the ground that the counsel of the accused is busy in Holi festival celebration, therefore, the complainant could not be cross examined. The order sheet of complaint case No.1024/2011 do not show at the margin any signature of next noting of the dates. The order sheet however shows the next date of hearing as 25.03.2014.
13. The order sheet of complaint case No.1334/2011 shows the signature of the complainant and applicant wherein the date was noted by the applicant as 25.04.2014. However, the order sheet shows that the case was fixed for 25.03.2014. On 25.03.2014, the order sheet reflects that when the case was taken up, an application was filed on behalf of the accused that he has not received the certified copy of the documents and the Advocate has gone out of the town to attend the case at Raipur and therefore on that ground adjournment was sought. Perusal of the order sheet would show that for last three years, the case was adjourned for cross-examination of the complainant on some reasons or the others at the behest of the applicant/accused.
14. The argument of the petitioner that though the date of hearing of case were fixed for 25.04.2014, but the cases were taken on 25.03.2014 is defeated by the own conduct of the applicant/accused. It appears that subsequent defence was outcome of an afterthought as in both the complaint case, the applicant appeared before the J.M.F.C. Court on 25.03.2014. Therefore, if according to accused/applicant the date of hearing was given on 25.04.2014, it would be completely unacceptable to hold that all of a sudden the accused

would come and attend the particular date of hearing in the Court without any knowledge thereof.

15. Reading of the order sheet would show that on 25.03.2014, the accused appeared and noted the further date of hearing of 04.04.2014. Consequently, it can be inferred that the applicant had full conscious knowledge of the fact that actually the case was fixed for 25.03.2014. The revisional Court has therefore, meticulously considered this aspect and has deprecated the allegations leveled against the Judicial Magistrate at the behest of the accused. This Court also after perusal of the record of the Court below is of the opinion that false and frivolous grounds have been raised and false accusation has been made in the memo of revision supported by affidavit.
16. Reading of the memo of revision as also the affidavit attached with that, which was filed by the petitioner in the revisional Court, it reflects that in the memo of revision, statement was made that the Court has changed the order sheet and the date of hearing was interpolated by the Court. In the affidavit, at para 3, attached with the memo of revision, it is stated specifically that the petitioner had signed the order sheet and noted the date of 24.04.2015 in both the complaint cases i.e. complaint case No.1334 & 1024 of 2011. Perusal of the order sheet of complaint case No.1024/2011 however do not support such contention. It is further alleged that the Court of J.M.F.C. has completely changed the order sheet and replaced it by another order sheet. The said averments also appears to be completely wrong, therefore, the petitioner has stated false averments on the affidavit, for which the learned revisional Court has directed for issuance of proceeding under Section 193 of Cr.P.C.
17. Therefore, after going through the entire documents and the order of the revisional Court, I am not inclined to invoke the extra ordinary jurisdiction of

this Court under Section 482 of Cr.P.C. specially taking into the facts and conduct displayed by the petitioner.

18. Accordingly, the petition having no merit is liable to be dismissed at the motion stage itself.
19. The Registry is directed to send back the records of the Court below immediately.
20. The complainant shall be informed about the date of hearing by summons and the accused who is represented before this Court shall appear before the Court of J.M.F.C. on the next date of hearing i.e. on 30.10.2015.

Sd/-
(Goutam Bhaduri)
JUDGE

Ashok