

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 415 of 2015

Mohanlal Agrawal S/o Late Madan Lal Agrawal, Aged About 57
years R/O Main Road, Sitamani Korba, Tahsil & District- Korba,
Chhattisgarh

---- Petitioner

Versus

Rudemal Agrawal S/o Biharilal, Aged About 64 Years, R/O Main
Road Sitamani Road, Korba, Tahsil & District- Korba, Chhattisgarh

---- Respondent

For Petitioners : Shri Sushobhit Singh, Advocate

HON'BLE GOUTAM BHADURI

Order On Board

29/06/2015

Heard on admission.

2. This is a petition under Section 482 of the Code of Criminal Procedure against the order dated 27.04.2015 passed in Criminal Revision No.15/2015 by the First Additional Sessions Judge, Korba, whereby the the order of framing of charge dated 16.02.2015 passed by the Chief Judicial Magistrate, Korba, in Criminal Case No.625/2014 has been affirmed.

3. Learned counsel for the petitioner would submit that a complaint under Section 138 of the Negotiable Instruments Act was preferred by Respondent/complainant, Rudemal Agrawal against the petitioner for the reason that a Cheque which was issued by the petitioner was dishonoured for want of sufficient funds. He submits that in order to

substantiate the case under Section 138 of the Negotiable Instruments Act (for short, the N.I. Act), the complainant has to establish that there is legally enforceable debt. He further contends that initially an agreement was entered into between complainant and the petitioner for sale of land and an amount of Rs.61 lakhs was paid to the petitioner by the complainant and thereafter how the figure of Rs.1,60,00,000/- (One Crore Sixty Lakhs) would come into play is a question to be determined which cannot be accepted as it does not fall within the ambit of legally enforceable debt. He placed reliance on a decision of the Supreme Court ***in Criminal Appeal No.830 of 2014 (M/s. Magnum Aviation Pvt. Ltd., & ors. Vs. M/s. Magnum Aviation Pvt. Ltd. & Anr.)*** decided on 07th April, 2014 and would submit that in order to substantiate the liability under Section 138 N.I. Act, there has to be legally enforceable debt and in absence thereof, same cannot be accepted and therefore, prays for quashment of complaint.

4. I have gone through the impugned order and documents which are placed on record.
5. The complaint filed under Sections 138 & 114 of the N.I. Act purports that the averments have been made that initially an agreement of sale of land was executed between the petitioner and complainant and an amount of Rs.61 lakhs was paid by the complainant but development of the land could not be carried out for various reasons for fault of the petitioner, therefore, he agreed to refund the amount of Rs.1,60,00,000/- inclusive of damages and advance made.
6. Learned Court below has framed the charges after considering the *prima facie* evidence. Reading of the order of the Revisional Court

would show that during the course of argument, the signature over the cheque of Rs.1,60,00,000/- was admitted by the petitioner. Section 138 of the N.I. Act draws a presumption that where a cheque drawn by the person on an account maintained by him with a banker for payment of any amount to another person from out of that account is dishonoured due to lack of sufficient funds, in absence of any adverse facts, would be deemed to be issued for the enforceable debts. A perusal of the records would show that the disputed cheque dated 14.05.2014 was presented in the Bank on 15.5.2014 and on 17.5.2014 it came to the notice of the petitioner that the account on which the cheque drawn was issued was not having sufficient funds, therefore, the notices were issued on 29.05.2014 and when the payment was not made ultimately the complaint was filed.

7. A perusal of the order would show that mainly reference is raised that some cheques or documents were missed from the possession of the petitioner for which the complaint was made to the Police and the complainant having received the cheque books has misused the same and as an arm twisting, complaint under Section 138 of N.I. Act was filed against the petitioner. A perusal of the records would show that nothing has been admitted by the complainant. On the contrary, as it would reflect from the order, the petitioner has admitted that the cheque bears his signature. Consequently, it becomes a question of evidence before the Court.

8. The Supreme Court in the case law reported in ***AIR 2013 SC 52 (Shoraj Singh Ahlawat and ors. Vs. State of U.P., and another)*** has held that the Court trying the case can direct discharge only for reasons to be recorded by it and only if it considers the charge against the accused to be groundless. Section 240 of the Code provides for framing of a charge if upon consideration of the Police

report and the documents sent therewith and making such examination, if any, of the accused as the Magistrate thinks necessary, the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX, -which such Magistrate is competent to try and which can be adequately punished by him. The ambit of Section 239 Cr.P.C. and the approach to be adopted by the Court while exercising the powers vested in it under the said provision fell for consideration of this Court in ***Onkar Nath Mishra and others Vs. State (NCT of Delhi) and another*** (2008) 2 SCC 561 : (AIR 2008 SC (Supp) 204 : 2008 AIR SCW 96).

9. Therefore, taking into consideration the orders passed by the court below and the arguments advanced, it cannot be accepted at this stage that the defence taken by the petitioner is sacrosanct, which is subject to rebuttal and the facts can only be substantiated after considering the evidence. In view of the foregoing discussion, I am not inclined to interfere with the orders of framing of charge at this stage. Accordingly, the petition is dismissed at the admission stage. It is made clear that the Court has not expressed any opinion on merits about admissibility or to draw inference of any accusation and interpretation of statement or evidence.

Sd/-
(GOUTAM BHADURI)
JUDGE