NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 665 of 2015

1. Ismail Mohammed, S/o. Late Nisar Mohammed, Aged About 47 years, C/o. M/s Ismail Brothers, Gulmohar Park, Ram Nagar, Gudhiyari, Raipur, Tahsil & District Raipur, Civil And Revenue District- Raipur, Chhattisgarh

---- Petitioner

Versus

1. Smt. Varsh Daga, wife of Shri Sumit Kumar Daga, Aged about 50 years, through power of attorney holder Shri Sumit Kumar Daga, son of Shri Sunil Kumar Daga, R/o E-601, Palm Residency, Rajendra Nagar, Raipur, Tahsil & District Raipur

---- Respondent

For Petitioner : Shri B.P. Sharma and Shri Hari Agrawal, Advocates

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Hon'ble Shri Justice Goutam Bhaduri

Order On Board

03/08/2015

1. Heard on admission.

2. Challenge in this petition is to the order dated 18th June 2015 passed by 9th Additional Sessions Judge, Raipur (C.G.) in Criminal Revision No. 46/2015 whereby an order passed by the Judicial Magistrate First Class dated 11/12/2014 in Criminal Complaint No.4245/2014 under Section 138 of Negotiable Instrument Act, 1881 was under challenge by the petitioner.

3. Learned counsel for the petitioner contended that in criminal complaint under Section 138 of Negotiable Instrument Act was filed by the respondent Smt. Varsh Daga. The counsel would submit that after entering appearance in such complaint, an application under Section 91 of Cr.P.C. was filed by the petitioner and the balance sheet of the complainant (respondent) and Income Tax Return of the complainant (respondent) was called for. It was further prayed that since under the Chhattisgarh Money Lenders Act, 1934 the complainant was under obligation to maintain the account and get the registration through the Tahsildar and in absence of that liability can not be enforced. Learned counsel further contended that according to Section 11 of the Money Lenders Act, the registration is compulsory for money lending and if there is contravention of the Money Lenders Act and the person carries on the business of money lending then it would attract penalty.

4. It is further submitted that the documents requisitioned are necessary to prove the status of the complainant and to substantiate that no amount of loan was taken by the petitioner. The counsel would further submit that mandatory notice required under Section 138 of Negotiable Instrument Act was not served to the accused, before filing of the complaint. It is contended that the notice was not delivered as the endorsement was not claimed. It

was therefore, contended that the delivery of statutory notice was not made so the cause of action to file the complaint has not accrued. The counsel placed his reliance in the matter of ***Rahul Builders Vs. Arihant Fertilizers & Chemicals and Another, (2008) 2 SCC 321*** and would submit that demand made in notice is too vague and therefore, the omnibus demand will not satisfy the requirement of demand as contemplated before filing. Consequently, the entire proceeding of the Criminal Case No. 4245/2014 including the order dated 11/12/2014 be quashed.

5. Heard on admission.

6. Perused the documents and the order. The status of compliant shows that the stage of complaint is it's inception. The records shows that on a complaint filed under Section 138 of Negotiable Instrument Act, the petitioner has entered his appearance and thereafter has filed an application under Section 3(a) (b) read with Section 11 B of Money Lenders Act , 1934 read with Section 254 (2) of Cr.P.C. By such application the petitioner sought to call for the entire account and the documents of Tahsildar and the registration certificate issued by the Tahsildar under the Money Lenders Act. The perusal of the document filed by the petitioner whereby certain documents were called for would show that such application was moved on the presumption that the respondent

who filed the complaint under Section 138 of Negotiable Instrument Act carries on the business of Money Lenders Act. The perusal of the complaint under Section 138 of the Negotiable Instrument Act do not show such averment except the averment that petitioner has availed the loan from respondent. It was further contended by the petitioner that cheque of Rs.5 Lakhs was given as a security. The argument advanced by learned counsel for the petitioner that when the petitioner do not have any amount to pay the interest how cheque of Rs.5 Lakhs can be issued, therefore it would be deemed to be a security. Such argument in the opinion of this Court is completely misconceived and without any fact or evidence. The petitioner cannot develop a self satisfactory story and act upon it believing it to be true. The petitioner is at liberty to raise any defence and establish his case during cross-examination. The another point which is raised that the notice is not served can also be established during cross-examination. The endorsement of 'not claimed' in ordinary parlence prima-facie lead to draw an interference that the person to whom it was addressed, despite intimation or tender did not receive it. Therefore, such argument of the petitioner that the notice has not been delivered cannot be appreciated at this stage.

7. Reading of the complaint would go to show that *prima facie* case has been made out for which the offence under Section 138 of Negotiable Instrument Act is made out. Reading of the complainant would show that *prima facie* case was made out on which the notices were issued to petitioner for appearance. Consequently on the presumption and self claimed story of the petitioner complaint cannot be thrown out of the Court. Therefore, after careful examination of entire document & order and on consideration of submission made I am not inclined to exercise power vested in the Court under Section 482 of Cr.P.C. to quash the complaint U/s.138 of Negotiable Instrument Act, therefore, same is liable to be rejected.

8. Consequently, the petition is dismissed at the admission stage itself.

Sd/-

(Goutam Bhaduri)
Judge

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