

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 873 of 2015**

M. Mohan Rao, S/o. Late M.S. Chalam, Aged About 54 Years, R/o. H.No. 12/C, "J" Pocket, Maroda Sector, Bhilai, Police Station Newai, Tah. & Distt. Durg, Chhattisgarh.

**---- Petitioner****Versus**

1. Pragyanand Sahu, S/o. Shri Horilal Sahu, Aged About 40 Years, R/o. Village Hanoda, Police Station Utai, Tah. & Distt. Durg, Chhattisgarh.
2. State Of Chhattisgarh, Through: District Magistrate, Durg, Distt. Durg Chhattisgarh.

**---- Respondents**

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| For Petitioner  | : | Mr. Shrawan Agrawal, Advocate |
| For Respondents | : | Ms. M. Asha, Panel Lawyer     |

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**Hon'ble Shri Justice Goutam Bhaduri****Order On Board****29/09/2015**

Heard.

1. Challenge in this petition is to the order dated 03.09.2015, passed by the learned Additional Session Judge, Durg, wherein the order passed by the Judicial Magistrate First Class, Durg, on 21.07.2015 in Complaint Case No.960/2013 in between *Pragyanand Sahu v. M. Mohan Rao* was affirmed. The order pertains to rejection of a prayer to cross examine the complainant on an application moved under Section 145(2) of Negotiable Instrument Act.
2. Learned counsel for the petitioner submits that when an application is filed under Section 145(2) of Negotiable Instrument Act, the Court ought to have given time to the petitioner to cross examine the complainant and failure to give an opportunity to the petitioner would lead to miscarriage of justice. He placed his reliance in (2010) 3 SCC 83 and quoted para 34 of the said judgment and would submit that as per the spirit of Section 145(2) of

Negotiable Instrument Act, the petitioner ought to have been given the right to cross examine and consequently it has to be allowed.

3. I have gone through the order of the revisional Court. Perusal of the order of the revisional Court would show that a complaint under Section 138 of Negotiable Instrument Act was filed on 07.08.2013 wherein the petitioner entered his appearance on 28.09.2013. Subsequently, an affidavit was filed on 07.11.2013 by the complainant of his examination in chief. Thereafter, four dates were given for cross examination i.e. 07.12.2013, 13.01.2014, 10.02.2014 and 20.02.2014 but despite the opportunity granted, the petitioner did not avail the said opportunity and contended that he is not able to cross examine and on other occasion, prayer was made to file certain document and dates were adjourned. The order further records that on 20.02.2014, on the fourth date of hearing, the petitioner accused moved an application under Section 91 of Cr.P.C., which was rejected and on the same date, in the second half, the time was given for cross examination. Thereafter, the transfer petition was filed to transfer the case and consequently, the complaint case was stayed for a considerable period from 26.03.2014 to 16.07.2014. The Transfer Petition bearing No.6/2014 was however dismissed by the High Court. Thereafter, on 16.07.2014, another application was filed by the petitioner that against the order dated 20.02.2014, he wants to prefer a revision before the higher Court and subsequent to it on 18.07.2014, three applications were filed and again an application to transfer the case to the other Judicial Magistrate First Class was dismissed by the Session Judge Durg on 30.09.2014. The order sheet further reflects that the revision against the order dated 20.02.2014 which was filed before the Session Judge, Durg, was also dismissed.
4. The argument which is advanced by the learned counsel for the petitioner that the learned trial Court should ought to have given opportunity to cross examine the complainant in view of Section 145(2) of Negotiable Instrument

Act appears to be misconceived in the facts of this case. Perusal of the order sheet would show that as many as four dates have been given to the petitioner to cross examine, but he failed; instead different applications were filed including an application to transfer the complaint case to other Court and such transfer petitions were dismissed twice, once by the High Court and another by the Session Court. Section 145(2) of Negotiable Instrument Act is all speaks about the cross examination. Reading of para 34 of the case law cited by the learned counsel for the petitioner would show that the Hon'ble Supreme Court has elaborated the law in which the procedure to be adopted when the statement is filed on affidavit as it is to be treated as examination in chief.

5. Here the question is about the opportunity to cross examine, which was already granted to the petitioner for four times. Consequently, it cannot be stated that the opportunity to cross examine has been denied. Reading of the order would show that the manner in which the petitioner has behaved and filed the petition to transfer the case on some ground or other, which ultimately stood rejected, wanted to drive the Court to a corner which cannot be appreciated and in view of the fact that already four opportunities having been granted, the petitioner deliberately did not cross examine the witness. Further opportunity cannot be granted specially the manner in which the petitioner has moved different applications.
6. In view of foregoing, I am not inclined to invoke the extra ordinary jurisdiction vested in this Court under Section 482 of Cr.P.C.
7. Accordingly, the petition, being devoid of merit, is dismissed at the admission stage itself.

Sd/-  
(Goutam Bhaduri)  
JUDGE