

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 324 of 2016**

Makhan Lal Upadhyay S/o Late Salik Ram Aged About 53 Years R/o Village - Barpali, Police Station & Tahsil - Kartala, Civil & Revenue District - Korba Chhattisgarh

---- Petitioner**Versus**

Pooran Singh Gaure S/o Late Purshottam Singh Gaure Aged About 60 Years R/o Quarter No. 14 / E 3 A Type, Hospital Sector, Dalli Rajhara, Police Station - Rajhara, Civil & Revenue District - Balod Chhattisgarh

---- Respondent

For Petitioner :	Mr. Paras Mani Shriwas, Advocate
For Respondent :	Mr. Jitendra Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****17.06.2016**

1. The challenge in the present Petition against the order dated 27.02.2016 passed by the Judicial Magistrate 1st Class, Dalli Rajhara, District Balod (C.G.) in Compliant Case No. 571/2015 vide the said impugned order the Court below has rejected the Application under Sections 204, 251 and 259 of the Cr.P.C.

2. The facts in brief is that it is said that the present Petitioner had taken a loan from the Respondent in the year 2007 to a tune of Rs. 6 lakhs. Subsequently towards the discharge of the said loan, the present Petitioner is said to have issued a cheque in favour of the Respondent for the said amount. The Respondent-complainant subsequently presented the said cheque for clearance in his bank i.e. Punjab

National Bank, Branch Dalli Rajahara on 30.12.2014. It is said that the Bank had dishonoured the cheque on the ground of insufficiency of the fund on 09.01.2015. Thereafter, notice was issued by the Respondent to the Petitioner on 26.09.2015 and since within one month's time from the date of notice the Petitioner did not honour the notice leading the Respondent to file compliant case against the present Petitioner for the offence under Section 138 of the Negotiable Instrument Act, 1881 (in short 'the N.I. Act') before the Court of Judicial Magistrate 1st Class, Dalli Rajhara registered as Complaint Case No. 571/2015. The Judicial Magistrate after due consideration of the complaint registered the case and issued summons to the accused-Petitioner. The Petitioner later on entered appearance before the Court below on 24.12.2015 and filed an Application under Sections 204, 251 and 259 of the Cr.P.C. stating that there is no prima facie case made out against the present Petitioner under the provisions of the N.I. Act and therefore prayed for his discharge from the said proceedings. The Court below finally vide its impugned Order dated 27.02.2016 rejected the same. It is this order which is assailed in the present Misc. Petition.

3. According to the learned Counsel for the Petitioner the bank initially intimated the Respondent in respect of the dishonouring of the cheque on 09.01.2015 and as such legal notice Annexure P/2 issued by the Respondent to the Petitioner on 26.09.2015 is beyond the prescribed limit of intimation under the N.I. Act and therefore the Court below has committed an error in not appreciating the same, and instead of rejecting the Complaint taking cognizance of the same ordered for

registering the case against the Petitioner.

4. According to the Petitioner the error is apparent on the face of the record looking under the provisions of the N.I. Act and further he relies upon decision of this High Court in a case reported in 2015 (2) C.G.L.J. 9 (M/s Golden Graphics Vs. Ashok Agrawal).

5. Learned Counsel appearing for the Respondent however submits that the Petitioner has not placed the facts properly before the Court. In fact, the cheque which was given by the Petitioner to the Respondent was presented for clearance on 13.12.2014 and thereafter there has been no written intimation from the Bank to the Respondent in respect of dishonouring of the cheque and finally the Respondent had to approach and request the authorities of the Bank and which was accepted by the Bank and ultimately issued a written intimation to the Respondent on 04.09.2015, and the legal notice was issued on 26.09.2015 which is within the permissible limits of 30 days under the provisions of the N.I. Act. Therefore, there is no illegality committed by the Court below in entertaining the case and registering the complaint against the Petitioner and prays that instant Misc. Petition deserves to be dismissed being devoid of merits.

6. Considering the rival contentions put forth by the Counsel for the Petitioner as well as the Counsel for the Respondent, what is apparent from the impugned order is that the Court below has taken note of the contentions put forth by the either sides and that from the available record what appears is that the Bank had for the first time given written intimation to the Respondent in respect of the dishonouring of the

cheque only on 04.09.2015 and therefore the contentions of the Petitioner that the Bank had intimated the Respondent regarding dishonouring of the cheque on 09.01.2015 perhaps is without any prima facie substance in his possession brought before the Court below to substantiate the said contention.

7. Under the given facts and circumstances of the case that the documents provided by the complainant so far as the first intimation from the Bank to the Respondent being that of 04.09.2015 the legal notice served on 26.09.2015 can not be held to be beyond the period of limitation prescribed under N.I. Act. Further if on the basis of the said document available on record of the Court below, in the opinion of this Court there is no illegality or perversity committed by the Court below in registering the complaint and issuing the summons to the present accused-Petitioner.

8. So far as the judgment relied by the Counsel for Petitioner in the case of M/s Golden Graphics (Supra) is concerned, the fact and circumstances of the present case is entirely different from the said case. In the said case the notice was issued beyond a period of 30 days from the date of receipt of intimation from the Bank whereas such is not the contention in the instant case. Thus, the judgment cited by the Petitioner is entirely distinguishable on facts.

9. So far as the contentions put forth by the Petitioner through the Application under Sections 204, 251 and 259 is concerned, the Petitioner had to substantiate the facts submitted before the Court below by leading a cogent evidence both oral and documentary to show

that the case is itself not maintainable.

10. Since the matter is yet to be thrashed out by leading evidences on either side, this Court is of the opinion that the Court below has not committed any error in rejecting the Application at this stage.

11. Accordingly, the instant Miscellaneous Petitioner being devoid of merit, the same is dismissed.

Sd/-
(P. Sam Koshy)
JUDGE