

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 559 of 2016

Dr. Anil Khare S/o Late Bhagwanprasad Khare, aged about 65 years
Profession - Consultant Surgeon S.G.O. Nursing Home Sagar, R/o
Agrawal Bhawan, Bhagwan Ganj Sagar, P.S. Cantt Sagar, Civil &
Revenue District - Sagar M.P.

---- Petitioner

Versus

Anjul Katare S/o Dr. S.R. Katare, aged about 27 years, R/o 1200-3750
Thamaya Street, Apartment No. 105, Freemont California (U.S.A.)
through Dr. S.R. Katare (Father) and Power of Attorney Holder of
Respondent, R/o 1829 near Vivekanand Nagar, new Aadarsh Nagar,
District – Durg, Chhattisgarh

---- Respondent

For Petitioner	:	Mr. Sunil Pillai, Advocate.
For Respondent-State	:	Mr. Jitendra Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04/10/2016

The present petition under Section 482 CrPC has been filed seeking for quashment of the order dated 26.04.2016 passed by the Additional Sessions Judge, Durg in Criminal Revision No. 59 of 2016 arising out of the order of the JMFC, Durg passed in Criminal complaint case No.448 of 2009.

2. Counsel for the petitioner seeks for quashment of the entire complaint case on the sole ground that the complainant has not fulfilled the mandatory requirement for making out an offence under Section 138 of Negotiable Instrument Act (hereinafter referred as 'NI Act') at the time of registration of the said complaint.

3. According to the counsel for the petitioner, a statutory demand notice was required immediately after the cheque got dishonoured after the same being presented before the Bank. There had to be a legal notice issued to the drawer within 15 days which in the instant case according to the petitioner has not been made and therefore, the registration of the complaint

and the subsequent proceedings before the trial Court are bad in law and deserve to be rejected.

4. Counsel for the respondent opposing the petition submits that the fact in the present case is a cheque dated 24.04.2000 issued by the drawer to the respondent-complainant which got dishonoured in October, 2000. Thereafter, the complainant issued a legal notice to which there was no response on the part of the petitioner which forced the respondent-complainant to initiate a proceeding under Section 138 of NI Act as early as on 30.12.2000. The Trial Court is proceeding with the matter from 30.12.2000 and has reached at the far end stage of the trial. The matter is now being adjourned from couple of months only for the statement of the accused to be recorded under Section 313 CrPC. Thus, at this far end stage of trial it would not be proper for this Court to quash the same which would amount to a pre-trial decision after appreciation of the facts, when the trial Court itself has gone into the merits of the case and recorded the entire evidence and reached to its final stage and only one stage is left i.e. recording of the statement under Section 313 CrPC and recording of the defence witness, if any. Thus, counsel for the respondent prays for rejection of the petition on the ground of delay.

5. On perusal of the record it reflects that the cause of action in the instant case arose in the year 2000 when the alleged cheque was got dishonoured and the subsequent proceeding was drawn under Section 138 of NI Act in December, 2000. It is almost 16 years the trial is proceeding before the Court below and it has reached at the stage where all the witnesses of the complainant have already been examined and have also been exhaustively cross-examined. Now, the matter is fixed for recording of the statement of the accused under Section 313 CrPC. Since the entire trial has almost concluded, it would be more appropriate to permit the Court below to reach to a logical conclusion in the light of the evidence on record

where the petitioner would also have all the liberty to take the stand in his defence in the cross-examination before the Court below. It is also a case where the next stage would be the petitioner accused having the liberty of leading evidence in his defence.

6. Thus, this Court is of the opinion that it would not be proper at this juncture to interfere with the trial proceeding and go into the merit of the case. Accordingly, the present petition is dismissed only on the ground that it has been preferred at such a belated stage of trial.

7. However, it is made clear that the rejection of this petition would not preclude the petitioner-accused from taking all the defence that is available to him before the Trial Court in accordance with law.

Sd/-
(P. Sam Koshy)
Judge