

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL MISC. PETITION NO. 938 OF 2016**

Sandeep Gupta, aged 43 years, S/o Shri Purushottam Gupta, through Sandeep Stationary Mart & Book Depot, near Devshree Talkies Chowk, Dhamtari, P.S./Tahsil/District Dhamtari (C.G.)

... Applicant**Versus**

Rakesh Chhajed, S/o Bhawar Lal Chhajed, R/o Maha Laxmi Enclave, House No.12, Sihava Road, Dhamtari, Tahsil and District Dhamtari (C.G.)

... Non-applicant

For Applicant : Mr. Ritesh Verma, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****18/10/2016**

1. The present petition under Section 482 of CrPC has been preferred by applicant-accused assailing the order dated 8.3.2016 passed by the Judicial Magistrate First Class, Dhamtari whereby the application under Section 138(b) of the Negotiable Instruments Act ('N.I. Act', for short) filed by him was rejected. Against the said order dated 8.3.2016, a revision petition was also preferred by him and by order dated 28.7.2016 the Revisional Court, i.e., Sessions Judge, Dhamtari, also dismissed the said revision.

2. Counsel for the Applicant submits that it is a case where the Court below ought to have considered the application under Section 138(b) of the N.I. Act preferred by the Applicant on its merits and should have gone into the question of maintainability of the complaint case itself at the first instance and thereafter should have proceeded further. According to him, the complaint itself has been filed beyond the prescribed period of limitation under the N.I. Act and therefore it ought to have been decided at the preliminary stage before going into the merits of the case. He further submits that the Trial Court as well as the Revisional Court both have

committed an error of law in not appreciating the contents of the complaint and also the dates which are relevant for adjudication of the case at the first instance and as a result the Applicant will be forced to undergo the entire trauma of trial unnecessarily for no fault of his when the complaint itself was not maintainable.

3. Having considered the contentions put forth by the Counsel for the Applicant and also taking note of the fact that the impugned order of the Trial Court is the order dated 8.3.2016 and by now admittedly as has been submitted by the Counsel for the Applicant himself that the Trial has already progressed substantially and is in the midst of recording of evidence on behalf of the complainant. Further, on consideration of the application under Section 138(b) of the N.I. Act, it reflects that the contentions raised by the Applicant all are matters of fact which can be thrashed out only after recording of the evidence and that which would be extracted from the cross-examination of the complainant and which at this juncture cannot be decided only on the basis pleading without evidence.

4. Thus, in the opinion of this Court, the Trial Court at the first instance while rejecting the application under Section 138(b) of the N.I. Act on 8.3.2016 and the Revisional Court while rejecting the revision petition on 28.7.2016 have not committed any error of law or on fact and this Court does not find a strong case made out by the Applicant for invoking extraordinary jurisdiction by this Court under Section 482 of CrPC for interfering with the two orders.

5. The Hon'ble Supreme Court in the case of **Inspector of Police, CBI Vs. B. Raja Gopal and Others** [2002 (9) SCC 533] has held as under:

“2. When a trial was in progress and reached almost the penultimate stage the High Court stepped in and quashed the criminal proceedings. The aggrieved State has come up with this appeal. The case involved offences under Sections 420,

468 and 471 IPC etc., on the allegation that Canara Bank was defrauded. One of the premises adopted by the High Court was that there was a compromise between the bank officials and the accused and the disputed amount found due from the accused had been paid later. Even assuming that the said stand of the accused is correct, that was not enough for quashing the criminal proceedings. Perhaps that would have been a ground for pleading mitigation at the final stage.

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4. Nonetheless, we are of the view that the premature quashment made by the High Court is not in accordance with law. We, therefore, allow this appeal and set aside the impugned judgment.”

6. Further, in the case of **State of Orissa and Anr. Vs. Saroj Kumar Sahoo** [2005 (13) SCC 540], the Supreme Court has held as under :

“8. Exercise of power under Section 482 of the Cr.P.C. in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the court possessed before the enactment of the Cr.P.C. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Cr.P.C., (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction.While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse.”

7. Accordingly, the petition being devoid of merits the same is dismissed. Needless to mention, it is expected that the Trial Court shall consider the same also in case the Applicant raises it during the course of trial.

Sd/-

(P. Sam Koshy)
Judge