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HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P No.999 of 2016**

Abhay Kumar Kotdiya S/o R. Kotdiya Aged About 47 Years Proprietor Abhay Kumar Kotdiya, Beside Moti Halvai, Sadar Line, Rajnandgaon, Police Station City Kotwali, Rajnandgaon, District & Tahsil Rajnandgaon, Chhattisgarh.

---- Petitioner**Versus**

Saurabh Jain S/o Jeevan Lala Jain Aged About 33 Years Partner, M/s Jeevanlal Jain, Shop No. 24, 25, Akashganga Complex, Supela Bhilai, Police Station Supela, Bahilai, Tahsil & District Durg, Chhattisgarh.

-----Respondent

For Petitioner:
For Respondent:

Shri Praveen Dhurandhar, Advocate.
None.

Single Bench: Hon'ble Shri P. Sam Koshy, J
Order On Board

16.9.2016

1. The present Cr.M.P under section 482 Cr.P.C has been filed challenging the registration of the Complaint Case under Section 138 of the Negotiable Instruments Act against the Petitioner on the complaint made by the Respondent.

2. The sole ground to challenge the registration of the complaint and seeking quashment of the same is the ground that the Court below has not taken into consideration the fact that the notice does not mention the date on which the service of demand notice was effected upon the Petitioner and therefore, the Respondent/Complainant ought to have granted clear 15 days time to the Petitioner for discharging the liability and the perusal of the record shows that the Complaint Case was filed on the 15th day itself and therefore, the same could not have been entertained and prays for the quashment of the

same.

3. Learned Counsel for the Petitioner relies upon the judgment of the Supreme Court in **(2002) 9 Supreme Court Cases 414** (Singareni Collieries Co. Ltd., Kothagudem, A.P. vs. Workmen of Singareni Collieries Co. Ltd. And Others).

4. Having considered the submissions made by learned Counsel for the Petitioner and on perusal of the record, what clearly reflects is the fact that the issuance of cheque by the Petitioner to the Respondent is not challenged. Subsequently, the presentation of the cheque was also not under dispute. Thereafter, the dishonouring of the cheque on the ground of insufficient funds also is an admitted factual position in the present case.

5. The other aspect which has also to be taken note of is the fact that the Respondent/Complainant had issued a legal notice or a demand notice on 1.8.2013 to the Petitioner/accused which was received by the Petitioner/accused as it stands proved from the reply that he has issued to the Respondent/Complainant on 12.8.2013. Thereafter, the order sheets of the Court below show that the Complaint Case was presented before the Court below on 27.8.2013. If we take into consideration the date on which the demand notice was effected i.e. 12.8.2013 and if we take 15 days from then, it would clearly prima facie establish that the matter has been brought before the Court below after the requirement of 15 days period is over.

6. This Court, in exercise of its powers under Section 482 Cr.P.C, would not at this juncture, look into the minute details of the case so as to ascertain whether the Court below was right in calculating the number of days from the date of the demand notice being served upon the Petitioner and also on the merits of the case. All that the Court below at this stage in exercise of its

power under Section 482 Cr.P.C was required to see whether the ingredients as is required under Section 138 of the Negotiable Instruments Act have been complied with at the time of filing of the complaint before the Court below or not.

7. From the admitted position of the case itself, so far as the issuance of the cheque till the stage of issuance of the demand notice and the service date on the Petitioner/accused and the reply being made to the said notice have not been disputed in the instant case. Thus, prima facie this Court is of the opinion that all the ingredients required under Section 138 of the Negotiable Instruments Act are made out by the Court below in registering the Complaint Case. So far as the contentions of the Petitioner whether sufficient number of days have been calculated properly by the Court below cannot be looked into by this Court at this stage and he is at liberty to raise all these grounds during the course of recording of the evidence before the Court below. This Court does not find any strong case for quashment of the entire proceedings itself on this ground.

8. So far as the judgment cited by learned Counsel for the Petitioner is concerned, the facts of the said case are entirely different from the factual background of the instant case. In the said case, the case of the Petitioner itself was that complainant does not disclose the fact whether the demand notice had been served upon the accused or not which is not the subject matter in the present case as there is an admission on the part of the Petitioner/accused itself that the demand notice was duly served upon him and he has also replied to the said notice. Thus, the said judgment of the Supreme Court is quite distinguishable from the facts of the instant case and would not be applicable in the instant case.

9. In view of above, the instant Cr.M.P, being devoid of merits, is liable to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE

Priya