

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1290 of 2016**

M/s Shree Nav Durga Traders Through Proprietor Brijnandan Gupta S/o Late Anjani Kumar Gupta Aged About 28 Years R/o Ganiyari Road Waidhan District Singourli, Madhya Pradesh.

---- Petitioner

Versus

1. The State of Chhattisgarh Through The Station House Officer Surajpur District Surajpur, Chhattisgarh.
2. Kalwant Goyal S/o Prakashchand Goyal Aged About 53 Years Proprietor Saket Rolling Mill Private Limited Industrial Area Nayanpur (Girwarganj) Police Station Surajpur District Surajpur, Chhattisgarh.

---- Respondents

For Petitioner
For Respondent/State

Shri AN Pandey, Advocate.
Shri OP Sahu, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

25/11/2016

1. The present petition under Section 482 CrPC has been filed seeking for quashment of the FIR No.414 of 2016 registered at Police Station, Surajpur, Distt. Surajpur on 07.10.2016 against the petitioner's establishment for the offence punishable under Section 420 IPC.
2. Counsel for the petitioner submits that it is a case where the FIR itself could not have been lodged against the petitioner for the reason that the respondent No.2-complainant had remedy of filing of complaint case under Section 138 of the Negotiable Instruments Act against the petitioner. According to him, it is undisputed that the cheque was issued by the petitioner to the respondent No.2 and when the said cheque was

put for clearance on 30.08.2016, there was no sufficient fund. However, subsequently, sufficient funds/balance were available in the bank account, but the respondent No.2 chose filing of FIR against the petitioner in spite of initiating proceedings under Section 138 of NI Act. Counsel for the petitioner drew the attention of the court to the statement of petitioner's bank account showing sufficient balance/fund.

3. The said ground for challenging/seeking for quashment of FIR is not a strong ground. The proceeding under Section 138 NI Act is a separate proceeding which can also go along with the criminal complaint lodged for cheating and fraud played by the petitioner as alleged by the respondent No.2. Merely because the respondent No.2 had a remedy of initiating proceeding under Section 138 NI Act against the present petitioner by itself would not preclude the respondent No.2 from initiating criminal action against the petitioner for the act of cheating and fraud played by the petitioner.
4. For the foregoing reasons, this court is of the opinion that no strong case is made out by the petitioner for quashing the FIR. Accordingly, the petition fails and is dismissed.

SD/-
(P. Sam Koshy)
Judge