

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No. 1178 of 2016**

Smt. Shobhna Walde W/o Shri Madhukar Walde, aged about 48 years, Asst. Grade I I I, Room. No. 21, Collector Office, Raipur, R/o New Ganj Mandi Road, Near Verma General Stores, Pandri, District Raipur, Chhattisgarh.

---- Applicant**Versus**

1. Puran Lal Peshwani S/o Shri Laxman Das Peshwani, aged about 53 years, R/o Shaddani Darbar, Near Sindhi Gurudwara, Pandari, Raipur, District Raipur, Chhattisgarh.
2. State of Chhattisgarh through the District Magistrate, District Raipur, Chhattisgarh.

---- Respondents

For Applicant	:	Shri J. K. Gupta, Advocate
For Respondent/State	:	Shri Bhaskar Payashi, Panel Layer

Hon'ble Shri Justice P. Sam Koshy**Order On Board****22/12/2016**

Heard on I.A. No. 01/2016 for condonation of delay.

2. For the reasons assigned in the said application, I.A. No.01 is allowed and the delay of 52 days in filing the criminal revision stands condoned.

3. The present revision petition has arisen out of the judgment dated 30.03.2016 passed by the JMFC, Raipur in Criminal Complaint Case No. 315/2013 whereby the applicant was initially convicted for the offence under Section 138 of Negotiable Instrument Act and sentenced to undergo RI for six months with fine of Rs.70,000/- with default stipulation. The said order dated 30.03.2016 was assailed before the 9th Additional Sessions Judge, Raipur in Criminal Appeal No.63/2016. The appellate Court vide its order dated 19.07.2016 partly allowed the appeal to the extent that maintaining

the conviction of the applicant under Section 138 of NI Act reduced the sentence part to till rising of the Court. However, the fine amount has been enhanced from Rs. 70,000/- to Rs.80,000/-.

4. It is this order dated 19.07.2016 which has been assailed in the present criminal revision.

5. Counsel for the applicant submits that the Court below ought to have considered the fact that the said cheque was not given against any legally enforceable debt, but it was given only as a security which was misused by the respondent no.1 and tried to encash the same. He submits that the Court below has not properly appreciated the evidence which has come on record particularly in respect of the fact that the applicant was a very poor rustic lady and is earning her livelihood by working as a maidservant whereas the respondent no.1 is a businessman who runs the business of money lending. Therefore, the case which has been filed by respondent no.1 is a false and fabricated case and the impugned judgment deserves to be set aside/quashed.

6. However, on perusal of the records clearly reflect that the factual matrix of the case is not disputed in as much as the present applicant does not dispute the issuance of a cheque to respondent no.1/complainant. Likewise, it is not in dispute that when the said cheque was presented for clearance got dishonoured for insufficient fund. It is also not in dispute that after the cheque was dishonoured, notice was served to the applicant and when she failed to clear the debt upon the respondent no.1, the proceeding under Section 138 of NI Act was initiated.

7. With the aforesaid factual matrix of the case, if we look into the evidence which has come on record particularly that of respondent no.1 Puran Lal Peshwani who was examined as applicant witness No.1 would

clearly reflect that the applicant had taken certain loan from respondent no.1 and for clearance of the said loan, the applicant had given a cheque to him. When the said cheque was put for clearance after the present applicant failed to clear the debt on the respondent no.1, the same got dishonoured on account of insufficient fund leading to the filing of the proceeding under Section 138 of NI Act.

8. From the record it also reveals that the complainant/respondent no.1 was cross-examined by the applicant and there was nothing strong which could be extracted from the cross-examination so as to disbelieve the version of the complainant or the case made by him. Once when the evidence so far as the issuance of the cheque by the applicant has been established by the Court below coupled with the fact that the same got dishonoured for insufficient fund, the necessary ingredients required for establishing the case under Section 138 of NI Act are made out. Further, no strong evidence has been led by the applicant to disprove the contents of the complaint or to hold that the findings given by the two Courts below were perverse to the evidence on record.

9. In view of the same, this Court does not find any strong case made out for admission of revision petition. Thus, the present Criminal Revision being devoid of merit deserves to be and is accordingly dismissed.

Sd/-

(P. Sam Koshy)
JUDGE