

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P No. 1160 of 2015**

Chandram Sidar (Panchayat - Teacher) S/o Vishwnath Sidar Aged About 38 Years R/o Bazar-Para Near Chandidai Temple Pamgarh Police - Station - Pamgarh District - Janjgir Champa Chhattisgarh

---- Petitioner**Versus**

1. Shivkumar Yadav, S/o Sonaram Yadav Aged About 43 Years R/o Care Of Satish Kirana Store Sasha Road Pamgarh Tahsil & Police - Station - Pamgarh District - Janjgir - Champa Chhattisgarh
2. State Of Chhattisgarh Through Its District Magistrate District - Janjgir - Champa Chhattisgarh

-----Respondents

For Petitioner:

Shri Ravi Maheswari, Advocate.

For Respondent No.2/State:

Shri Rajendra Tripathi, Panel Lawyer.

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

1.8.2016

1. The present Petition has been filed challenging the order dated 25.6.2015 wherein the application under Sections 386 & 391 Cr.P.C preferred by the present Petitioner before the 4th Additional Sessions Judge, Bilaspur in Criminal Appeal No.62/2014 has been rejected.

2. The facts in nut-shell are that the present Petitioner was an accused in Criminal Case No.70/2013 for the offence punishable under Section 138 of the Negotiable Instruments Act which resulted in his conviction and sentencing him to RI for a period of 6 months with fine of Rs.10,000/- vide judgment dated 14.2.2014. Against the said judgment of conviction, the Petitioner has preferred an appeal i.e. Criminal Appeal No.62/2014 which is pending before the 4th Additional Sessions Judge, Bilaspur. Pending the

appeal before the lower Appellate Court, the present Petitioner has moved an application under Sections 386 and 391 Cr.P.C seeking for summoning of the officials of Dena Bank, Bilaspur along with the documents pertaining to the Bank Account as also the documents pertaining to the issuance of the cheque book to the account holder.

3. The Court below taking into consideration the facts and circumstances of the case vide the impugned order, has rejected the same holding that the present Petitioner who is an accused person, after the prosecution had completed its evidence before the trial Court on 21.1.2014, made a specific submission before the Court below that he did not intend to lead any defence witness and therefore, the matter was closed and the judgment of conviction was passed on 14.2.2014. The Court below was also of the view that since the present Petitioner/accused did not take steps in the course of the trial, his subsequent application is of no significance and therefore, has rejected the same leading to the filing of the present Petition.

4. Learned Counsel for the Petitioner submits that the present Petitioner had moved such application with an intention of establishing the fact that there is no offence committed by him in as much as the he and the Complainant were both friends and the documents would show that it was at the behest of the Complainant himself that the Bank account was opened as also the cheque book was received which could have been proved by leading proper evidence along with the documents from the officials of the Bank and in the absence of which, the Petitioner's case would be highly prejudiced and therefore, the Court below ought to have allowed the said application.

5. Perusal of the record would show that in a proceeding under Section 138 of the Negotiable Instruments Act, the documents pertaining to a person

of the Bank account or for that matter, the documents relating to the issuance of the cheque book are not of much significance for the reason that it is the issuance of the cheque by the Complainant which is the most relevant document for the proceeding under Section 138 of the Negotiable Instruments Act. The Petitioner does not dispute the issuance of the cheque or the signature on the said cheque. It is also pertinent to note at this juncture that the Petitioner in the instant case did not take appropriate steps during the course of the trial and after the conclusion of the trial and also after the judgment of the conviction having been passed against the Petitioner, therefore he cannot be permitted to improve upon his case by giving fresh evidence at the appellate stage.

6. For the foregoing reasons, this Court is of the opinion that the Court below has not committed any illegality or infirmity while rejecting the application.

7. Accordingly, the instant Cr.M.P, being devoid of merits, the same is accordingly rejected.

Sd/-
(P. Sam Koshy)
JUDGE