

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1176 of 2015**

1. Smt. Sarita Katiyara W/o Satish Katiyara Aged About 47 Years R/o B-1, Avanti Vihar, P.S. Telibandha, Raipur Tahsil & District - Raipur (Chhattisgarh).

---- Petitioner

Versus

1. Amit Jain S/o. Champa Lal Jain Aged About 29 Years (Wrongly Mentioned As Sampa Lal Jain), R/o Anuvrat Residency, Jhanda Chowk New Shanti Nagar, P. S. Civil Line, Raipur, Tahsil & District - Raipur (Chhattisgarh).

---- Respondent

For Petitioner	:	Shri Shrawan Agrawal, Advocate
For Respondent	:	Shri Raghvendra Pradhan, Advocate

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****08/02/2016**

1. As the maintainability of the present Cr.M.P. is involved, the matter is heard finally at the motion stage itself.
2. Brief facts required for the adjudication of the instant Cr.M.P. are that on 6.5.2013 on a complaint filed by the respondent against the petitioner/accused, the Court below after perusal of the documents, affidavit and primary evidence held that there is sufficient matter to proceed with Section 138 of the Negotiable Instruments Act, 1881 against the petitioner and thereby registered the said Complaint Case against the petitioner and it was ordered that on paying PF and copy of the Complaint, summons be issued to the petitioner through ordinary and registered post. Thereafter, the

matter was listed for the appearance of accused on 6.6.2013. Thereafter, as per the documents annexed on behalf of the petitioner on 9.3.2015 the substance of accusation is stated to the petitioner. The petitioner denied for any offence; plea was recorded and the matter was listed for the complainants evidence on 5.5.2015. Against the said order dated 9.3.2015, the petitioner/revisoner had preferred a Criminal Revision before the 8th Additional Sessions Judge, Raipur (CG). The learned revisional Court in Criminal Revision No.194/2015 vide order dated 2.12.2015 held that Criminal Revision filed under Section 397 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') has no substance and hence dismissed the said Criminal Revision. The order passed by the 8th Additional Sessions Judge, Raipur petitioner had challenged it and prayed that this Court by exercising the jurisdiction may set aside the order dated 9.3.2015 of the trial Court and order passed in Criminal Revision dated 2.12.2015 and direct the Court below to supply of the documents upon which the proceedings for substance of accusation have been stated under section 251 of the Cr.P.C.

3. Heard learned counsel for the petitioner who submits that as per the order sheet dated 6.5.2013, the original documents were returned to the respondent. With this, they were not in the custody of the Court. As per Annexure P/3 application for Criminal Revision it is mentioned in the synopsis of the case by the petitioner that knowledge regarding filing of a Complaint Case under Section 138 of the Negotiable Instruments Act was known to the present petitioner on 27.2.2015 wherein she prayed for cancellation of the warrant of arrest and on prayer the bail was accepted. The petitioner had adduced the bail bond before the trial Court. It goes to show that till 17.2.2015 the petitioner was not given copy of the complaint and the documents filed in the complaint case. From perusal of the order sheet dated

9.3.2015 it is apparent that proceedings under Section 251 of the Cr.P.C. were completed by the substance of accusation stated to the petitioner goes to show that the copy of the complaint and the documents were not given to the petitioner till date.

4. Learned counsel for the petitioner would further submit that proceedings can be commenced only after the supply of documents. Learned counsel draws the jurisdiction of Section 207 Cr.P.C. and would submit that by way of natural justice and criminal jurisprudence though there is no specific provision for the same. Learned counsel for the petitioner submitted that as per para 7 of the order passed by the revisional Court dated 2.12.2015 as the original document is not in the custody of the trial Court she cannot get the certified copy of the same from the Copying Section. Hence, it is submitted on behalf of the petitioner that the trial Court be directed to supply the documents upon which the proceedings are initiated under Section 251 of the Cr.P.C.

5. Upon perusal of Section 204 Cr.P.C. issue of process Sub-section (3) thus, reads as under :

204. Issue of process – (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be -

- (a) a summons-case, he shall issue his summons for the attendance of the accused, or
- (b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under

sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

Also for the relevant provision Section 208 Cr.P.C. reads as under :

208. Supply of copies of statements and documents to accused in other cases triable by Court of Session -Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 that the offence is triable exclusively the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:-

- (i) the statements recorded under section 200 or section 202, or all persons examined by the Magistrate;
- (ii) the statements and confessions, if any, recorded under section 161 or section 164;
- (iii) any documents produced before the Magistrate on which the prosecution proposes to rely:

Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

6. From bare reading of the above provisions, as a settled law when the process are issued they shall be accompanied by a copy of such complaint. There is no provision except the supply of copy of statement and document, other than a case triable by Court of Session though there are provisions under Section 207 Cr.P.C. wherein if a proceeding has been initiated on a police report then it is required to furnish to the accused, free of cost, copy of the report and other documents as mentioned in section 207 of the Cr.P.C. incidently, for the present case, which is a summons triable case no such

provision has been enacted in the legislation.

7. From the facts of the present case, while perusal of para 5 of the order of the revisional Court, it goes to show that in the process it is mentioned that copy of the complaint is annexed and also in a receipt of a process sent through registered mode, the same was received by the petitioner. No prayer has been made before the Court below regarding any enquiry if it can be initiated for the allegations of any false signature on the service of notice. In absence of any such prayer, in the considered view of this Court, the fact that the copy of the complaint case was annexed along with process, same has been served by registered mode to the petitioner can be admitted without any doubt for the moment and also with the facts that supply of documents is not a requirement in Section 204 Cr.P.C. of sub-section (3) and also this is a summons triable case only and not the case instituted on a police report triable by the Court of Session. In the considered view of this Court, no illegality or impropriety has been committed by the Courts below and as such the complainant is not entitled to get the copy of the document in absence of any specific legislation in the matter.

8. Consequently, the instant Cr.M.P. is dismissed at the motion stage itself as not maintainable.

Sd/

(Chandra Bhushan Bajpai)
Judge