

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 377 Of 2015**

Ashish Tondon S/o M.D. Tondon Aged About 45 Years R/o In Front Of Sonu Bar,
Sirsa Road, Contractor Colony, Bhilai, PS Supela, Tah. And Distt. Durg Chhattisgarh;
Pin Code 491002.

---- Applicant**Vs**

Jhaggar Prasad Verma S/o Balu Ram Verma Aged About 64 Years R/o Village And
Post Morid, Ps Utai, Tah. Patan, Distt. Durg Chhattisgarh.

---- Respondent

Shri Amiyakant Tiwari, counsel for the applicant/s.
Shri Pushkar Sinha, counsel for the respondent.

And**CRR No. 607 of 2015**

Jhaggar Prasad Verma S/o Balu Ram Verma Aged About 64 Years R/o Village &
Post- Morid, P.S.- Utai, Tehsil- Patan, District- Durg, Chhattisgarh

---- Applicant**Versus**

1. Ashish Tondon S/o M.D. Tondon Aged About 45 Years Occupation- Civil Contractor,
R/o In Front Of Sonu Bar, Sirsa Road, Contractor Colony, Bhilai, P.S.- Supela, Tehsil
& District- Durg, Chhattisgarh
2. State Of Chhattisgarh Through: District Magistrate, Durg, District- Durg,
Chhattisgarh

---- Respondents

Shri Pushkar Sinha, counsel for the applicant/s.
Shri Amiyakant Tiwari, counsel for respondent No.1.
Shri Chandresh Shrivastava, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****30/11/2016**

These two revisions are being disposed off by this common order as they arise out of the order passed in appeal in a case of complaint arising out of cheque dishonour.

1. The complainant – Jhaggar filed a complaint under Section 138 of the Negotiable Instruments Act (for short 'the Act') alleging that a loan amount of Rs.3,20,000/- was advanced by him to the accused on 25/05/2010. It was alleged that towards discharge of his loan liability, the accused / Ashish Tondon had issued a cheque of Rs.3,20,000/- payable on account of the complainant, which was presented for being honoured in the bank, on 02/08/2011. However, the cheque was dishonoured by the bank on the ground of insufficient fund in the account of the accused. The complainant sent notice through advocate on 19/08/2011 which was received by the accused / Ashish Tondon on 20/08/2011. As the accused failed to pay the amount under the cheque within a period of 15 days from the date of receipt of registered notice, complaint was filed.

In support of the complaint, the complainant examined himself as solitary witness and relied upon agreement between the parties and he also produced the cheque in original along with endorsement and memo of the bank. The accused seeking to dispute his signature on the disputed cheque, it was sent for opinion of hand writing expert with specimen signature of the accused, by the order of the Court. The accused was also examined against incriminating evidence and circumstances appearing against him and he denied any cheque issued by him to the complainant.

2. The Trial Court, however, relied upon complainant's version that he had advanced loan to the accused and the cheque issued by the accused towards discharge of his loan liability and repayment of loan, was dishonoured and despite notice, payment was not made.

3. The Trial Court, vide its order dated 11/07/2014 held the accused guilty of commission of offence under Section 138 of the Act and imposed payment of Rs.3,80,000/- as compensation to the complainant and in default of payment, simple

imprisonment of two months.

4. Both the complainant and the accused aggrieved, by the order of the Trial Court, preferred their respective appeals. While accused assailed correctness and validity of order of conviction and compensation, the complainant preferred appeal for enhancement of sentence as well as compensation.

Learned lower Appellate Court vide impugned judgment, partly allowed the appeal of the accused in the manner that the sentence part was reduced till rising of the Court and compensation amount was enhanced by Rs.20,000/-. The appeal preferred by the complainant was also allowed in part,.

5. Assailing legality and validity of the order of conviction and sentence and order of compensation, learned counsel appearing for the accused – Ashish in criminal revision No.377/2015, submitted that both the Courts below committed gross illegality in holding the guilt of the applicant / Ashish proved, ignoring a very vital and important evidence of handwriting expert examined as defence witness who has clearly deposed that the specimen signature of the accused and the signature obtained on the disputed cheque appeared to be different and not identical. Learned counsel further argued that this evidence of the expert was rejected by the Courts below without assigning any reason and swayed only by oral testimony of the complainant recording that the complainant had advanced loan and accused issued a cheque in his favour. Learned counsel for the accused argued that the evidence of the complainant with regard to grant of loan appears to be improbable looking to his financial condition as he only happens to be an agriculturist and he failed to produce any evidence before the Court that he was financially so sound as to give such a huge amount of Rs.3,20,000/- as loan. Learned counsel for the accused also argued that the defence of the accused that his signatures were obtained on blank cheque as also in blank stamp paper which was also used as agreement and cheque of Rs.3,20,000/- was plausible in view of doubt raised that the complainant was not financially sound and it is the accused who was the Contractor and the blank cheques were deposited with a third person towards a security only without there being any loan transaction. This plausible defence was also ignored. Lastly, it is submitted that even if the Court finds that the cheque was issued, the amount more than the cheque amount could not be directed to be paid as compensation.

6. On the other hand, learned counsel appearing for the complainant / Jhaggar argued that the complainant's revision is confined to the aspect of enhancement of compensation amount. He submits that the Court below having found that the cheque was dishonoured and the amount was not paid, awarded a very low amount towards compensation whereas the law permits grant of compensation without any upper limit and in the circumstances of the present case, looking to the loss caused to the complainant, agony, expenses of litigation etc., grant of Rs.80,000/- over and above the amount of cheque is hardly sufficient.

7. Both the Courts below have held the appellant guilty of commission of offence. The findings of the Court below are based on the oral testimony of Jhaggar Prasad who has deposed in his evidence before the Court that he had advanced loan of Rs.3,20,000/- on 25/05/2010 to the accused who happens to be a friend of the complainant. He has further stated in his evidence that at the time of granting loan, an agreement – cum- receipt was executed by the parties which has been produced and proved before the Court as Ex.P/1. The disputed cheque which was presented in the bank and returned with endorsement of the bank, was also produced before the Court. It was not disputed that the cheque presented before the bank was dishonoured on 09/08/2011 on the ground of insufficiency of fund in the account of the accused. The complainant has also proved issuance of notice by registered post to the accused and receipt was also filed before the Court. There is no proof that the accused offered to pay cheque amount to the complainant within a period of 15 days from the date of receipt of the notice. The Court below, while relying upon the complainant's case and his evidence, have sought corroboration from the contents of the cheque, which was also produced before the Court, endorsement of the bank thereon and agreement executed in writing between the complainant and the accused on a stamp paper.

8. The arguments of learned counsel for the accused that evidence of the handwriting expert proves that the cheque did not contain signature of the accused, has also been examined by both the Courts below. It is well settled that the report of hand writing experts is not binding on the Court. The Courts below have taken into consideration statement of the accused in which, he has admitted that he had issued a cheque under his signature. Moreover, the Courts below have also taken into consideration, appellant's own defence statement during the accused's defence examination that his signatures were obtained in the stamp paper. In both the

cases, defence of the accused has been that he has signed a blank cheque in the name of Narendra Traders and also that his signatures were obtained on blank stamp paper. Therefore, once the accused himself admitted his signature in the cheque as also in the stamp paper, experts report is only an evidence for the purposes of assessment of evidenciary value, taken together with all other evidence along with accused's own evidence. Therefore, for this reason, the Courts below have reached to the conclusion that the cheque as well as the agreement contains signature of the accused.

9. In view of above, I do not find any illegality committed by the Courts below in arriving at the conclusion of guilt by the applicant.

As far as sentence part is concerned, it cannot be disputed that the Magistrate, while convicting the accused has power to award compensation under Section 357 of CrPC. In the present case, learned lower Appellate Court has arrived at compensation amount payable to the complainant by taking into consideration that the cheque was issued in the year 2010, by awarding interest @ 9%. By this computation, learned lower Appellate Court worked out an additional amount of Rs.80,000/- payable by the accused to the complainant. Thus, a total amount of Rs.4,00,000/-, which includes amount under the cheque as well compensation, was directed to be paid to the complainant. The sentence awarded to the accused by the Trial Court has also been substantively reduced only till rising of the Court. Therefore, I do not find any ground to interfere with the impugned order passed by the learned lower Appellate Court either on the grounds raised by the accused or by the complainant, except that, in case, the amount of Rs.4,00,000/- is not paid by the accused within a period of three months, the accused shall undergo simple imprisonment of three months.

10. In the result, both the revisions are disposed off.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge