

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P No. 891 of 2013**

Rohit Automobiles Near Hasdev River Bridge Champa Distt. Janjgir, Proprietor
Lalkrishna Jaiswal Aged 50 Years, At Present R/o C/41 Alka Avenue, Near
Uslapur Railway Station Bilaspur Distt. Bilaspur C.G

---- Petitioner**Versus**

Shri Amirtilal Tandan S/o Late Shri Bulluram Tandan Aged About 35 Years
R/o Village Mulmula Thana And Tah. Pamgarh Distt. Janjgir Champa C.G.

-----Respondent

For Petitioner:	Smt	Smita	Jha,	Advocate.
For Respondent:	Shri	UKS Chandel ,	Advocate.	

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

25.7.2016

1. The present Cr.M.P has been preferred seeking leave to appeal to challenge the impugned judgment dated 27.3.2012 passed in Complaint Case No.22/2011 by the JMFC, Janjgir, Distt. Janjgir-Champa. Vide the said impugned judgment, the Court below has acquitted the Respondent from the charge under Section 138 of the Negotiable Instruments Act.

2. Facts in brief are that the present Petitioner had initiated a prosecution case against the Respondent under the provisions of Section 138 of the Negotiable Instruments Act. According to the Petitioner, the Respondent had issued a cheque for an amount of Rs1,40,500/- in favour of the ICICI Bank at Bilaspur dated 1.2.2008. The said cheque was put for clearance by the Bank but got dishonoured with a note of "insufficient funds". Subsequently, on completion of the formalities as is required under the Negotiable Instruments

Act, a complaint case was filed before the JMFC, Janjgir-Champa which was registered as Complaint case No.22/2011.

3. After the trial was complete, the Court below, vide the impugned judgment, passed an order of acquittal in favour of the Respondent which has been challenged in the present Cr.M.P seeking leave to appeal.

4. According to Counsel for the Petitioner, the Court below has failed to appreciate the fact that issuance of the cheque by the Respondent is not disputed. Likewise, the cheque got dishonoured on account of insufficient funds is also an admitted factual position and therefore, the case prima facie itself stands established to the extent of the Respondent issuing cheque in favour of the Petitioner which got dishonoured for insufficient funds. He further submits that the Court below failed to appreciate the fact that the said cheque was issued by the Respondent to the Petitioner who had paid the margin money required for depositing at the time of purchase of a tractor and the spare parts purchased by the Respondent and that the cheque was issued by the Respondent towards clearance of margin money paid by the Petitioner/Establishment.

5. However, on perusal of the record, it would show that during the course of the evidence, when specific questions were put to the Complainant as to what was an actual margin money paid by the Petitioner/Establishment to the Respondent at the time of the purchase of the tractor, the Complainant could not provide any satisfactory reply nor has he been able to produce any documentary proof in respect of the payment of margin money made by the Petitioner/Establishment to the Respondent/accused. Likewise, it is also reflected from the evidence that even on the date of recording of the evidence of the Complainant party before the Court below, was not able to give actual

amount of margin money released by the Petitioner/Establishment to the Respondent. Further, the finding of the fact which has come in the course of evidence is that the Complainant has not been able to show any documentary proof in respect of the transaction which was made by the Petitioner/Establishment with the Respondent. Thus, in the above given factual background, the Court below reached to the conclusion that since the Petitioner/Establishment has not been able to establish a legally enforceable debt/transaction with the Respondent, the case under Section 138 of Negotiable Instruments Act is not proved and established calling the accused to be held guilty of the said offence.

6. In the opinion of this Court, the Court below has not committed any illegality or infirmity while reaching to the conclusion as the findings are strictly in accordance with the evidence which has come during the course of the trial.

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

Sd/-

(P. Sam Koshy)

JUDGE