

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 298 of 2016**

Ravi Kumar S/o Shri Anil Kumar Aged About 41 Years Proprietor M/s. Anil Automobiles, R/o 3 Floor Chopda Complex, P.S. - Civil Lines Raipur, Present Residence Of A - 18 Anand Niketan Awanti Vihar Raipur, Civil & Revenue Distt. Raipur Chhattisgarh

---- Petitioner

**Versus**

1. Manoj Kumar Soni S/o R. K. Soni Aged About 38 Years Proprietor Mahamaya Jewelers, Budhapara Raipur, P.S. Civil Lines, Tahsil - Raipur, Civil & Revenue Distt. - Raipur Chhattisgarh
2. State Of Chhattisgarh Through District Magistrate Raipur, Distt. Raipur Chhattisgarh

---- Respondents

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| For Petitioner            | : | Shri Sunil Sahu, Advocate                      |
| For Respondent No.2/State | : | Shri Lav Sharma, Panel Lawyer on advance copy. |

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**Hon'ble Shri Justice Chandra Bhushan Bajpai****Order On Board****05/04/2016**

1. Heard on admission as also on the maintainability of the instant Cr. Revision.
2. Brief facts as required for adjudication of the instant Cr. Revision are that before the Judicial Magistrate First Class, Raipur (CG), an unregistered Cr. Complaint Case ( Manoj Kumar Soni Vs. Ravi Kumar) was filed on 3rd April, 2013. The trial Court after hearing the matter for taking cognizance held that the information for service of notice to accused has been received to the complainant on 6.9.2012, even then also the Complainant filed the Complaint on 3.10.2012. The delay prima facie cannot be held as bonafide mistake,

hence, dismissed the Complaint as barred by limitation. Against the said order, the Complainant/ revisioner filed Cr. Revision No.151/2013 before the Second Additional Sessions Judge, Raipur (CG), who vide order dated 29.1.2016 allowed the revision imposing cost of Rs.5,000/- and directed the trial Court to pass order as per law on the application filed under Section 142 of the Negotiable Instruments Act, 1881(for short the Act of 1881) and further directed to proceed as per law for the original case under Section 138 of the Act of 1881. Against the said order, the petitioner/ accused had filed the instant Cr. Revision wherein it is prayed that the order dated 29.1.2016 be quashed and the order passed by the trial Court dated 3.4.2013 may be restored.

3. Heard learned counsel for the petitioner.

4. Learned counsel for the petitioner submits that a Cheque was given on 9.4.2012 for Rs.1,08,000/-. The same was deposited by the complainant on the same day. The said Cheque get dishonored due to closure of the account dated 10.4.2012. On 1.5.2012, a demand notice was sent under Section 138 (b) of the Act of 1881. The same was served on 2.5.2012. The limitation starts from 2.5.2012 and expires after 45 days i.e. on 17.6.2012. The complaint was filed on 3.10.2012. As per the contents, the postal department gave information regarding service of notice to the complainant on 6.9.2012. Section 27 of the General Clauses Act 1897 is attracted in the matter and the provisions of Section 5 of the Limitation Act are not applicable in the present matter. As the notices were given on 1.5.2012 even after computation of limitation from 2.5.2012 for 45 days, the it completes on 17.6.2012. There is no separate application filed under Section 142 of the Act of 1881, hence, the order passed by the revisional court is incorrect and illegal, hence, the same may be quashed and the order passed by the trial Court may be restored. Further argued on behalf of the petitioner that the instant Cr. Revision against the order passed in

the revision by the Court of Sessions is maintainable under the provisions of Section 397, 399 sub-section (3) of the Cr.P.C.

5. Learned counsel for the petitioner placed reliance on Crimes 1983 (1) 952, Punjab and Haryana High Court (Balbir Kaur alias Hamir Kaur Vs. Jit Singh); Cri.L.J. 1977 (1) 142, Orissa High Court (Damodar Panigrahi and others v. Banchhanidhi Panigrahi and another); Cri.L.J.1980 (1) 248, Andhra Pradesh High Court (Baban and others, v. Sambamurthy and another); Cri.L.J. 1982 (1) 890, Andhra Pradesh High Court (Wajid Mirza v. Mohammed Ali Ahmed and others) and (1979) 1 SCC 560 (Jagir Singh Vs. Ranbir Singh and Another). He submitted that as per the above cited case laws, the person who filed a revision before the Sessions Court, he cannot file a revision against the revision, but the respondent may file a revision petition against the order passed by the revisional court, hence, it is submitted that the instant Cr. Revision may be admitted for hearing and also the same is maintainable.

6. For the purposes of appreciation of the above arguments, facts and the grounds taken in the instant Cr. Revision, order passed by the trial Court dated 3.4.2013 and the order passed by the revisional Court dated 29.1.2016 are perused.

7. After perusal of the order passed by the revisional Court, it goes to show that the revision was allowed along with a cost of Rs.5,000/-. This has nothing to do with any proceeding before the trial Court. Further, the revisional Court by operating the order at para 12 of the order directed the trial Court to pass order according to law on an application filed by the complainant under Section 142 of the Act of 1881 and also to proceed further with the original case under Section 138 of the Act of 1881. From perusal of the said order, it is clear that the matter is still under consideration before the trial Court on its merits so far as it relates to an application under Section 142 and regarding the original case under

Section 138 of the Act of 1881 goes to show that the matter is still pending before the trial Court for passing appropriate order as per law as directed by the revisional Court. Whatever argument is submitted before this Court can very well be submitted before the trial Court and the trial Court may appreciate the entire matter as directed.

8. On perusal of the order dated 29.1.2016 passed in Cr. Revision No.151/2013, in the considered view of this Court, without appreciating anything on the factual aspect and also on the legal aspect, since the question is open before the trial Court, the matter filed before the this Court is not maintainable as no substance and the instant Cr. Revision is liable to be dismissed.

9. Accordingly, the Cr. Revision is dismissed at the motion stage itself as not maintainable.

Sd/

**(Chandra Bhushan Bajpai)**  
**Judge**