

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 815 of 2016**

Mangeram Paarik S/o Late Rameshwar Paarik Aged About 62 Years R/o -
Quarter No. M.I.G.-1 B/25, Sharda Vihar Colony, Korba, Police Station,
Tahsil & District - Korba Chhattisgarh

---- Petitioner**Versus**

Vishambhar Dayal Agrawal S/o Late Harkesh Rai Agrawal Aged About 60
Years Resident Of - M.I.G. - 1/132, Pandit Ravi Shankar Shukla Nagar,
Korba, Police Station, Tahsil & District - Korba Chhattisgarh

---- Respondent

For Petitioner:

Shri Malay Kumar Bhaduri, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****02.08.2016**

1. The challenge in the present petition is against the order dated 19.07.2016 passed by the Sessions Judge, Korba in Criminal Revision No. 48/2016 whereby the Revisional Court has rejected the Revision Petition preferred by the Petitioner against the Order of the Chief Judicial Magistrate, Korba passed in Compliant Case No. 968/2006 in an application under Section 91 of CrPC moved by the Petitioner-accused.

2. The facts relevant for the adjudication of the present dispute is that the respondent-complainant had initiated proceedings under Section of 138 of N.I. Act against the Petitioner-accused alleging that the Respondent had taken a loan (monetary assistance) from the Petitioner-accused for the purpose of construction of house and subsequently as demanded by the complainant the petitioner is said to

have issued two cheques each amounting Rs. 1,00,00/- for a total amount of Rs. 2,00,000/- towards discharge of said liability. Subsequently, the respondent-complainant on submitting the cheques for clearance it got dishonored on account of insufficient fund leading to the filing of the complaint case.

3. It is pertinent to note that the complaint case was filed in the year 2006 and since then the matter is pending adjudication before the Court of Chief Judicial Magistrate, Korba. On 11.09.2015 i.e. almost after 9 years from the institution of the complaint case, the present Petitioner-accused filed an application under Section 91 of CrPC seeking directions to the Respondent-complainant for production of income tax return, cash book and book of accounts for the periods 2004-2005 and 2005-2006.

4. Learned Counsel for the petitioner submits that these documents were relevant for the purpose of establishing the case of the petitioner to show that there is no legally enforceable debt against the Respondent-complainant and the entire case under Section 138 of the N.I. Act preferred by the respondent-complainant is false.

5. The said application under Section 91 was rejected by the Chief Judicial Magistrate i.e. trial Court vide its order dated 04.03.2016 holding that the documents which were being sought under the said application were private in nature, therefore they were not relevant for adjudication of trial and thus rejected the same. The said order dated 04.03.2016 was subjected to challenge at Revisional Court which was registered as Criminal Revision No. 48/2016 before the Court of

Sessions Judge, Korba. The Sessions Judge, Korba rejected the Revision Petition vide the impugned order dated 19.07.2016 holding that since the application was an interlocutory order revision against an interlocutory order would not be maintainable. It is these two orders which have been questioned by the Petitioner-accused through the present CrMP invoking provisions of Section 482 CrPC.

6. Learned Counsel for the Petitioner submits that particularly the order of the Revisional Court holding that the application was interlocutory in nature is bad in law and per se illegal. Learned Counsel for the Petitioner also submitted that the Court below ought to have considered the relevancy of the document which have been sought for the purpose of proper adjudication of the case and it ought to have decided whether the documents were needed or not. The Court below has not considered the relevancy aspect and therefore both the orders of the court below are bad in law and deserve to be set aside.

7. Learned Counsel for the Petitioner heavily relied upon the decision of Allahabad High Court in case of **H.K. Rawal and Another Vs. Nidhi Prakash and Another**¹ which deals with the inherent power of the High Court under Section 482 CrPC and referred para 19 of the said judgment which states that the High Court under Section 482 of CrPC can interfere with the order of Revisional Court if the order of the Sessions Judge has resulted in the abuse of the process of the Courts or calls for interference to secure the ends of justice.

8. Learned Counsel for the Petitioner also relied upon the decision of the Madhya Pradesh High Court in the case of **Nana @ Jairam Vs.**

¹ 1990 CRI. L.J. 961

State of M.P. Through P.S.M.G. Road, Indore² and referred to paragraph 4 of the said judgment where the High Court of Madhya Pradesh has dealt with the relevancy of the document while considering the application under section 91 of the CrPC. Similarly, learned counsel for the Petitioner also relied upon the judgment of Madhya Pradesh High Court in the case of **Gayatri Bais and Another Vs. State of Madhya Pradesh and Others³** wherein again the High Court of Madhya Pradesh has held that the application under Section 91 of CrPC can be moved at the stage before framing of charge-sheet and if such application has been filed the Court below ought to have considered merits of the said application.

9. Another judgment which has been relied upon by learned Counsel for the Petitioner is the judgment passed by the Madhya Pradesh High Court in the case of **Ajay Kumar Bharadwaj & Anr. Vs. Anand Vijan⁴** wherein the High Court of Madhya Pradesh has held that the application under Section 91 ought to be decided by the Court below keeping in mind the just decision of the case and therefore the application under Section 91 of the CrPC filed by the Petitioner accused should also have been considered in the correct perspective and the Court should have kept in mind that it is ultimately the just decision which has to be reached at by the Court at the time of passing of the final judgment.

10. In the peculiar facts and circumstances of the case this Court is leaving the issue whether the application was an interim or not, whether

2 2002 (1) MPJR SN 17

3 1999 (1) MPLJ 444

4 2004 (II) MPJR SN 35

the order passed by the Trial Court was an interlocutory order or not, to be adjudicated in a different appropriate case.

11. This Court now goes to decide whether the order of the Court below in rejecting the application under Section 91 of CrPC is correct, proper and legal or not. Taking into consideration the fact that the complaint case is pending before the trial Court since 2006 and we are currently in year 2016 almost 10 years has lapsed till date. In spite of the fact that 10 years have passed, charge itself has not been framed, this Court exercising the inherent power under Section 482 of CrPC is going to decide the veracity and legality of the order passed by the Trial Court on 04.03.2016 while rejecting the application under Section 91 of CrPC. On perusal of the application which was filed by the Petitioner under Section 91 of CrPC what clearly reflects is that the Petitioner on dated 11.09.2015 for the first time moved an application summoning the documents i.e. income tax return, book of accounts and the cash book of the Respondent-complainant for the relevant period to show as to whether there is any legally enforceable debt in favour of the Respondent against the present Petitioner.

12. The facts which are undisputed in the instant case is that the Petitioner-accused does not dispute the signature on the cheques of being his own. He does not dispute the fact that the cheques which have been dishonoured for want of insufficient funds. He has also already filed a complaint in respect of these cheques having been lost at one stage of time and these basic things itself was raised before the Trial Court under the said admitted factual position of the case. If we look into the document it does not reflect whether the Respondent-

complainant was operating any commercial establishment wherein the documents which the Petitioner has sought for, is statutorily maintained. Moreover the basic case of the complainant itself is that the Respondent-complainant had taken some personal loan as monetary assistance for the purpose of construction of his house for which in normal course no entries are made particularly when this transaction was made at the personal level on account of friendship or relationship which the present Respondent-complainant had with the Petitioner.

13. In the given set of facts, if we look into the nature of the complaint the documents sought for by the Petitioner-accused, in the opinion of this Court, the Court below was justified in holding that the these documents are all private in nature. In addition, this Court is also of the opinion that once when the case under Section 138 of N.I. Act has been lodged against the Petitioner-accused all that is required for proving the case whether it would fall within the ambit of Section 138 of the N.I. Act or not. The complainant has to establish that the Petitioner accused had towards the discharge of liability issued the cheques. The Petitioner-accused does not dispute the fact that the signature on the cheques were not his and subsequently he lost the cheques for which he has lodged the complaint also.

14. In the opinion of this Court the documents which have been sought by the Petitioner-accused are not of much relevance as the admitted case of the complainant itself is that he has taken the loan at personal level and that the said loan was taken for construction of house.

15. In the opinion of this Court no strong case is made out by the Petitioner calling for interference with the order of the Trial Court dated 04.03.2016. The issue whether the order is interlocutory order or not is left open, the dispute be decided at appropriate stage in appropriate proceedings.

16. Considering the peculiar facts and circumstances of the case, this Court is not inclined to interfere with the impugned order.

17. Accordingly the Petition being devoid of merit, the same is dismissed.

Sd/-
(P. Sam Koshy)
JUDGE