

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 967 of 2015**

Avinash Kaling Authorised Signatory Velocity Netlinx MIG 1/994, Amdi Nagar, Hudco Bhilai. Previously Also At B/497, Street No. 25, Beside Sunshine School, Junwani Road Smriti Nagar Supela District Durg Tehsil And District Durg Chhattisgarh. (Not Mentioned In Order Under Challenged).

---- **Petitioner****Versus**

1. K. B. Cherian S/o Shri K.G. Cherian (Now Dead) Proprietor A.J. Infotech Through Special Power Of Attorney Holder, K.B. Rajesh Aged 39 Years, R/o Street 3/283, Smriti Nagar Junwani Bhilai, Police Station Supela, District Durg Chhattisgarh.
2. The State of Chhattisgarh Through The District Magistrate, Durg (Chhattisgarh) (Not Mentioned In Order Under Challenged).

---- **Respondents**

For Petitioner	: Mr. Gautam Khetrapal, Adv.
For Respondent No. 1	: Mrs. Fouzia Mirza, Adv.
For Respondent No. 2	: Mr. S.C. Khakhariya, Dy. AG

Order On Board**12/02/2016**

1. With consent of the parties, heard the matter finally at motion stage itself.
2. Facts of the case in brief are that by the judgment of the conviction and sentence dated 17-6-2013 passed in Cr. Complaint Case No. 563/2011, the Chief Judicial Magistrate, Durg by holding the accused/appellant/petitioner guilty for the offence under Section 138 of the Negotiable Instruments Act, 1881 (in brevity 'Act of 1881'), sentenced him to undergo S.I. for 3 months and also under the provision of Section 357 of Cr.P.C. directed to pay Rs. 7 lacs to the complainant by way of compensation and in default of payment of compensation the accused was directed to undergo imprisonment for six months. The petitioner/accused preferred an appeal bearing Cr. A. No. 120/2013 (Avinash Kaling -v- K.B. Cherian) before appellate court/2nd Additional Sessions Judge, Durg. During the pendency of the appeal, the petitioner/accused moved three applications under Section 391 of the Cr.P.C. dated 13-10-2014, 18-12-2014 and 24-1-

2015. The appellate court held that it would be appropriate to dispose of the said three applications at the time of judgment and thereby the appellate court kept all the three applications pending and the matter was listed for final arguments. Against said order, the petitioner i.e appellant/accused has preferred instant Cr.M.P. invoking jurisdiction vested to this Court under Section 482 of Cr.P.C. praying for a direction to the appellate court to dispose of the pending applications under Section 391 of the Cr.P.C. before deciding the appeal.

3. Learned counsel for the petitioner submits that as per provisions of Section 391 of the Cr.P.C. and as per settled law, the appellate court is required to decide the said three applications before passing the judgment. By keeping the applications pending, the appellate court has committed an error of law. Hence the appellate court may be ordered to dispose of those applications prior to the judgment.

4. On the other hand, learned counsel for the respondent No. 1 duly supported the order passed by the appellate court and prayed that there is no scope of interference in the impugned order dated 8-10-2015. Hence the instant Cr.M.P. may be dismissed.

5. For appreciating the arguments advanced on behalf of the respective parties, I have perused the petition, the documents annexed therewith including copy of the impugned order dated 8-10-2015.

6. Section 391 of the Cr.P.C. is relevant and reads thus :-

391.Appellate Court may take further evidence or direct it to be taken.-

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.

7. From perusal of Section 391 of the Cr.P.C. and also as per settled law, the appellate court is required to decide all those three interim applications filed under Section 391 of the Cr.P.C. prior to the judgment on its own merit. In the considered view of this Court the appellate court has committed an illegality and impropriety by keeping the applications pending. The petitioner has made out a case for invoking jurisdiction under section 482 of the Cr.P.C.

8. Consequently, the impugned order dated 8-10-2015 is set aside. The appellate court is directed to hear arguments after affording opportunity to both the parties on those three pending applications under Section 391 of Cr.P.C. and thereafter to dispose of the same on their own merit without any further delay first in accordance with law.

9. Parties are directed to remain present either in person or through their respective counsel, as the case may be, for making their submission on those three interim applications under Section 391 of the Cr.P.C. before the Court below on 9-3-2016.

10. The petition is allowed.

11. Parties may file certified copy of this order before the court below for compliance.

12. Registry is also directed to send a copy of this order to the court below through fax mode in addition to usual mode for compliance.

13. No order as to costs.

Sd/-
(Chandra Bhushan Bajpai)
Judge