

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No. 1356 of 2016**

Ramavatar Agrawal S/o late Shri Jagmohandas Agrawal, R/o Agrawal Bhawan, Vidya Nagar, Bilaspur PS Tarbahar, Bilaspur, Chhattisgarh

---- **Petitioner**

Versus

Shiv Kumar @ Jawahar Saraf S/o Moti Lal Saraf, Aged about 54 years, R/o Behind Motilal Petrol Pump, Link Road, PS Tarbahar, Bilaspur, Chhattisgarh.

---- **Respondent**

For petitioner

Shri Prafull Bharat and Shri Ankit
Singhal, Advocates.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/12/2016

1. The present petition under Section 482 CrPC has been filed seeking a limited prayer for a direction to the court below i.e. Judicial Magistrate, First Class, Bilaspur, to conclude trial in Complaint Case No.4664 of 2015 as expeditiously as possible within a fixed time schedule.
2. Counsel for the petitioner submits that it is a case where the petitioner had filed a complaint on 07.05.2015 before the court below under Section 138 of Negotiable Instruments Act (for short, NI Act). Subsequently, the charge was framed on 14.03.2016. Thereafter, the matter has been adjourned for almost 11 dates of hearing for the evidence of applicant. Those are 07.05.2016, 25.05.2016, 14.06.2016, 27.06.2016, 13.07.2016, 06.08.2016, 09.09.2016, 15.09.2016, 28.09.2016, 03.10.2016 and 25.10.2016. However, on some or the reasons the case was getting adjourned.

3. According to counsel for the petitioner, as per Section 143 NI Act, the proceedings in a complaint case under Section 138 NI Act is a summary trial and the court below was supposed to conclude trial within a maximum period of 6 months, but for some reason or the other, the matter was getting adjourned due to frivolous applications being moved by the respondent which is nothing but misuse of process of law as also misuse of court.
4. Counsel for the petitioner brought attention of the court to the judgment of Supreme Court in case of Indian Bank Association and Others Vs. Union of India and Others, reported in 2014 (5) SCC 590. Referring to paragraph 4 of said judgment, it was submitted that the insertion of Section 143 in the NI Act was with an intention for an expeditious trial of a proceeding drawn under Section 138 NI Act. He took the court through paragraph 11 of the said judgment which deals with the object and reasons for the amendment to be brought under the provisions of NI Act. For ready reference, paragraph 11 of the judgment reads as under :

“11. We have indicated, Sections 138 to 142 of the Act were found to be deficient in dealing with the dishonoured cheques. In the said circumstances, the legislature inserted new Sections 143 to 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002, which is brought into force w.e.f. 6th February, 2003. The object and reasons for the said Amendment Act are of some importance and are given below :-

“1.The Negotiable Instruments Act, 1881 was amended by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 wherein a new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque. These provisions were incorporated with a view to encourage the culture of use of cheques and enhancing the credibility of the instrument. The

existing provisions in the Negotiable Instruments Act, 1881, namely, sections 138 to 142 in Chapter XVII have been found deficient in dealing with dishonour of cheques. Not only the punishment provided in the Act has proved to be inadequate, the procedure prescribed for the Courts to deal with such matters has been found to be cumbersome. The Courts are unable to dispose of such cases expeditiously in a time bound manner in view of the procedure contained in the Act.

2. A large number of cases are reported to be pending under sections 138 to 142 of the Negotiable Instruments Act in various courts in the country. Keeping in view the large number of complaints under the said Act pending in various courts, a Working Group was constituted to review section 138 of the Negotiable Instruments Act, 1881 and make recommendations as to what changes were needed to effectively achieve the purpose of that section.

3. The recommendations of the Working Group along with other representations from various institutions and organisations were examined by the Government in consultation with the Reserve Bank of India and other legal experts, and a Bill, namely, the Negotiable Instruments (Amendment) Bill, 2001 was introduced in the Lok Sabha on 24th July, 2001. The Bill was referred to Standing Committee on Finance which made certain recommendations in its report submitted to Lok Sabha in November, 2001.

4. Keeping in view the recommendations of the Standing Committee on Finance and other representations, it has been decided to bring out, inter alia, the following amendments in the Negotiable Instruments Act, 1881, namely:—

- (i) to increase the punishment as prescribed under the Act from one year to two years;
- (ii) to increase the period for issue of notice by the payee to the drawer from 15 days to 30 days;
- (iii) to provide discretion to the Court to waive the period of one month, which has been prescribed for taking cognizance of the case under the Act;
- (iv) to prescribe procedure for dispensing with preliminary evidence of the complainant;
- (v) to prescribe procedure for servicing of summons to the accused or witness by the Court through speed post or empanelled private couriers;
- (vi) to provide for summary trial of the cases under the Act with a view to speeding up

disposal of cases;

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5. He further submits that taking into consideration the observations made by the Supreme Court in the said case and also keeping in view the provisions of Section 143 NI Act, the present petition deserves to be allowed and specific time period be granted to the court below for proceeding further with the matter for an early conclusion of the trial.
6. True it is that Section 143 NI Act provides for the case under Section 138 NI Act to be decided preferably within a period of six months, but we cannot loose sight of the fact that there are also number of cases which may have been filed much prior to the complaint case filed by the petitioner in the present case. Those cases would definitely have to be given more priority on the basis of its seniority ahead of the present case. However, it does not mean that the court should loose sight of the provisions of Section 143 NI Act while proceeding with the case under Section 138 NI Act.
7. It is also trite at this juncture to refer paragraph 24 of judgment passed by the Supreme Court in Indian Bank Association (Supra), wherein a specific direction has been given to all the criminal courts in the country dealing with Section 138 NI Act for speedy and expeditious disposal of cases falling under Section 138 NI Act, which reads as under :

“24. We, therefore, direct all the criminal courts in the country dealing with Section 138 cases to follow the abovementioned procedures for speedy and expeditious disposal of cases falling under Section 138 of the Negotiable Instruments Act. The writ petition is, accordingly, disposed of, as above.”

8. Thus, taking into consideration the overall facts and circumstances of the case and also keeping in view the fact that the court below must be having other cases of similar nature which have been filed much earlier to the present case, it is expected that the court below in the present case shall proceed and decide the matter as expeditiously as possible keeping in view the observations made by the Supreme Court in case of Indian Bank Association (Supra) and also keeping in mind the provisions of Section 143 NI Act.
9. With the aforesaid observations, the present petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

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