

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.193 of 2016**

Makhan Verma S/o Laxman Verma Aged About 38 Years R/o Village
Tulsi, Post Neora, P.S. Tilda, District Raipur Chhattisgarh.

---- **Petitioner**

Versus

1. Shankerlal Nayak, aged about 65 years, S/o Shri Chhotelal Nayak, R/o Village Tulsi, Post Neora, P.S. Tilda, District Raipur Chhattisgarh.
2. State of Chhattisgarh Through District Magistrate, Raipur Distt. Raipur Chhattisgarh.

---- **Respondents**

For Petitioner	Shri YC Sharma, Advocate.
For respondent No.1	Shri PP Sahu, Advocate.
For respondent/State	Shri Ashok Swarnakar, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/12/2016

1. The present petition under Section 482 CrPC has been filed seeking for quashment of complaint case No.113/2012 pending before the JMFC, Tilda, Distt. Raipur. The petitioner is also assailing the order dated 12.01.2016 passed by the Sessions Judge, Raipur, whereby the Sessions Judge has rejected the revision petition filed by the petitioner against the order dated 29.09.2015 passed by the JMFC, Tilda in complaint case No.113 of 2012.
2. The facts relevant for adjudication of the present dispute is that, the respondent No.1 in the instant case had filed a case before the JMFC, Tilda under the provisions of Section 138 of Negotiable Instrument Act

(for short, the NI Act). It was alleged that the present petitioner had issued a cheque amounting to Rs.10,00,000/- to the respondent towards discharge of liability.

3. After completion of formalities as are otherwise required for registration of complaint case under Section 138 of NI Act, Criminal Case No.113 of 2012 was registered and summons were ordered to be issued to the accused-petitioner herein. The petitioner entered appearance before the court below and moved an application for dismissal of the complaint. The ground raised for dismissal of said complaint case was that admittedly the cheque on the basis of which the case has been filed was issued in the name of firm M/s Shreya Builders and Colonizers and the complaint was filed only against the petitioner and therefore it was the firm which should have been the main accused and therefore the said firm also ought to have been impleaded as party in the complaint. In the absence of said firm being a party in the case, the complaint case is not maintainable. Therefore, rejection of said complaint case was sought for.
4. The trial court vide order dated 29.09.2015 rejected the said application holding that under the provisions of NI Act the complaint case is still maintainable.
5. The said order dated 29.09.2015 was put to challenge by way of criminal revision by the petitioner. The said criminal revision was registered as Criminal Revision No.430 of 2015. Vide impugned order dated 12.01.2016, the revisional court also rejected the revision petition holding that the court below has not committed any error of law in

rejecting the objection raised by the petitioner.

6. Counsel for the petitioner took the court through the copy of cheque which he has issued and which is the basis of the case before the court below and submitted that a perusal of cheque clearly stipulate that it has been issued on behalf of M/s Shreya Builders and Colonizers and signature on the cheque was on behalf of the authorized signatory and as such the complaint case could not have been filed only against the present petitioner. It was further argued that in view of the fact that the cheque was issued on behalf of the firm and was signed by the authorities signatory, it was incumbent upon the complainant to have lodged a complaint against the firm and the authorized signatory and not against the present petitioner alone. Therefore, the order of rejection by the trial court and also the revisional court is bad in law.
7. It was further contended by the petitioner that the reason for the complainant to have made the firm as party was on account of fact that whatever debt which the respondent had, was against the firm and not individually upon the petitioner. This was also all the more a reason required for impleading the firm as party. Therefore, prayed for setting aside/quashemnt of the two orders.
8. On the other hand, Shri PP Sahu, learned counsel appearing for the respondent submitted that it is a case where the petitioner is the proprietor of M/s Shreya Builders and Colonizers and that since it is a proprietorship firm, the provisions of Section 141 of NI Act or for that matter the objection of the petitioner for making the firm as party is not required. Once the signature of the petitioner is found on the cheque,

the presumption has to be drawn that the cheque has been issued by the petitioner and the same has been issued against the discharge of liability for enforceable debt.

9. It is further contended by the respondent that it is not a case where the firm M/s Shreya Builders and Colonizers is a company as defined under the provisions of Companies Act where there would be many Directors and other officers who are responsible for carrying on day to day affairs. In the present case it is the petitioner alone who has in capacity of being the proprietor of the said firm had negotiated with the respondent complainant and had personally handed over the cheque to the complainant. Thus, the liability, if any, would be individually upon the petitioner and only because the firm is not made as a party, the same cannot be said to be detrimental to the proceedings.
10. Having considered the rival contentions put forth on either side and on perusal of the record, what clearly reflects is the fact that the petitioner has not been able to show that firm M/s Shreya Builders and Colonizers was a company as is defined under the provision of Companies Act. It is also undisputed that the petitioner has not been able to show that apart from him, there are other persons who have responsible authorities and powers in the firm for issuance of cheque. Prima facie, it appears that the cheque bears signature of the petitioner even if in the capacity of authorized signatory.
11. Now, whether the signatures are genuine or not is a matter of evidence which cannot be looked into at this stage. Once it is the contention of the respondent complainant that there was a negotiation between the

petitioner and the respondent, the fact whether the petitioner had dealt with the respondent complainant in the capacity the proprietor of the firm M/s Shreya Builders and Colonizers, or otherwise are again matter of evidence which cannot be considered at this stage of case.

12. In view of admitted facts that the petitioner did not take a stand that it is a company as defined under the provisions of Companies Act, neither had taken a stand that it is a partnership company or limited company, in the opinion of this court both the courts below have not committed any illegality or infirmity in rejecting firstly the objection of the petitioner by the JMFC and secondly the rejection of the revision petition by the revisional court.
13. Accordingly, the petition being devoid of merit is liable to be and is hereby dismissed.

SD/-
(P. Sam Koshy)
Judge

inder