

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 604 OF 2016

Rakesh Singh Bais, S/o Late D.S. Bais, aged about 42 years, R/o B-37, Century Colony, Pandit- D.D.U. Nagar, P.S. D.D. Nagar, Raipur, Civil & Revenue District Raipur (C.G.)

... Petitioner

Versus

1. Devendra Kumar Chaudhary, S/o Shri Ramayan Chaudhary, R/o Maitry Nagar, Mahadev Ghaat Road Raipur, Tahsil & District Raipur (C.G.)
2. State of C.G., through : Collector, Raipur (C.G.)

... Respondents

For Petitioner	:	Mr. Shakti Raj Sinha, Advocate.
For Respondent 1	:	Mr. Shivendu Pandya, Advocate.
For Respondent 2	:	Mr. S.R.J. Jaiswal, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

15/12/2016

1. The present petition has been preferred by the Petitioner assailing the order dated 26.4.2016 passed by the Special Judge (C.B.I.) Raipur in Criminal Revision No. 135 of 2016.
2. Vide impugned order dated 26.4.2016, the Revisional Court has rejected the revision petition preferred by the present Petitioner against the order dated 13.4.2016 passed by the Judicial Magistrate First Class, Raipur in Criminal Complaint Case No. 55 of 2012 whereby the application under Section 91 of CrPC filed by the Petitioner has been rejected.
3. Facts of the case in brief are that the Respondent No.1 in the instant case has lodged a complaint against the Petitioner under Section 138 of the Negotiable Instruments Act ('N.I. Act' in short) alleging that the Petitioner had issued a cheque bearing No. 001398 of Allahabad Bank, dated 26.3.2012, for an amount of Rs. 2,00,000/- in favour of discharge of enforceable debts and the said cheque when was presented for clearance

on 26.3.2012 at the Bank, an intimation was received on 29.3.2012 about the dishonouring of the cheque with the endorsement that the account itself has been closed.

4. After necessary mandatory compliance under Section 138 of the N.I. Act, the matter was proceeded further and, in due course of time, evidence of either side was recorded and finally the matter was fixed for final arguments on 26.3.2016. However, since 26.3.2016 till 13.4.2016 the matter was adjourned for four occasions, and on all four occasions on some pretext or the other the matter got adjourned. On 13.4.2016, the Petitioner moved an application under Section 91 of CrPC with a request to the Court that the cheque involved in the case may be sent for a Handwriting expert's opinion and the handwriting in the said cheque when compared to the signature of the Petitioner with the writing of the name of the party and the figure mentioned in the cheque, the same is different and also the ink used is different. Therefore, according to the Petitioner, there is a great element of doubt on the case of the complainant and that this could prove from the Handwriting expert.

5. According to Shri Sinha, learned Counsel for the Petitioner, it is a case where the signature of the Petitioner is not disputed on the said cheque, but the blank cheque was left in the office so that in the case of emergency the same can be used by his family members and other staff for official purpose and one such cheque has been stolen from the custody of the Petitioner and which is said to have been used by Respondent No.1 by making entries in the said cheque and presenting the same. This has caused the requirement of the matter being sent for a Handwriting expert's opinion. According to him, no prejudice would be caused to the Respondents in case, if the said application is allowed and the matter is remitted back seeking for an opinion of the Handwriting expert and taking

final decision in the case. He further submits that in case, if such application is not allowed and the opinion of the Handwriting expert is not obtained, the same shall be detrimental to the interest of the Petitioner and it may amount to denial of a fair trial. He thus prayed for allowing of the petition by setting aside/quashing the two impugned orders.

6. Shri Pandya, learned Counsel for Respondent No.1, however opposes the petition and submits that it is a case where the said application has been filed only with an intention of dragging and prolonging the litigation. According to Shri Pandya, the complaint in the instant case was lodged as early as in the year 2012 and the fact that since 2012, almost four years have elapsed and till date the matter could not be concluded, itself shows the delay that has arisen in the conclusion of the trial. He further submits that it is a case where the evidence of either of the parties has been concluded and the matter was fixed for final arguments on 26.3.2016 and thereafter also on many dates, yet the matter could not be concluded and suddenly the present application has been filed by the Petitioner. He also submits that it is a case where the statements of the witnesses particularly, the prosecution side, have been recorded and if at all if the Petitioner intended to move the application under Section 91 of CrPC it ought to have been made at the first instance itself and the same having not done so, itself shows the malafide intention on the part of the Petitioner. He further contended that the present application has been initiated at a very belated stage and therefore also it does not warrant any interference and the present Cr.M.P. deserves to be rejected.

7. Having considered the rival contentions put forth on behalf of either side and on perusal of the record, on a specific query being put to Shri Sinha, learned Counsel for the Petitioner, he admits the fact that so far as the cheque having been stolen from the custody of the Petitioner he is not

aware of any proceeding having been drawn anywhere of a complaint being lodged in respect of the alleged stolen cheque. He further admits the fact that the evidence in the instant case was recorded at a much earlier stage and the application under Section 91 of CrPC was filed at a belated stage. Though he submits that the matter had not been concluded and therefore there was no prejudice that would have been caused to the respondent-complainant if the application would have been entertained. Another aspect which has to be seen is the fact that, from the evidences that have come on record it clearly reflects that the Petitioner has also cross-examined the complaint and his witnesses elaborately on this very issue and much of the evidences have already been extracted and which is not in dispute by the Counsel for Respondent No.1. Another aspect which has to be seen is the fact that, it is a case under Section 138 of the N.I. Act where as per the provisions of the N.I. Act itself it has to be conducted as a summary trial, and in the instant case if we look into the facts of the case it would refer that the complaint case is pending adjudication before the Court below since 2012 which itself would give sufficient indication of the matter being quite old.

8. For all the aforesaid reasons and also taking into consideration the fact that, the consideration under Section 138 of the N.I. Act where the offence charged against the accused has to be conducted in a summary manner, this Court does not find any illegality or infirmity on the part of the two Courts below while rejecting the said application.

9. The Cr.M.P. deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge