

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 637 of 2016**

1. Mukesh Banshiwala S/o Late Kishan Chand Banshiwala Aged About 52 Years R/o R.D.A. Colony, Tikrapara, P.S. Tikrapara, Tahsil & District Raipur Chhattisgarh Civil And Rev. Distt. Raipur Chhattisgarh.
2. Jitendra Banshiwala S/o Mukesh Banshiwalal Aged About 24 Years R/o R.D.A. Colony, Tikrapara, P.S. Tikrapara, Tahsil & District Raipur Chhattisgarh Civil And Rev. Distt. Raipur Chhattisgarh.

---- Petitioners**Versus**

1. Nitin Dahiya S/o Manoharlal Dahiya Aged About 34 Years R/o Near City Kotwali, Chhotapara, Police Station City Kotwali, District Raipur Chhattisgarh.
2. State Of Chhattisgarh Through The District Magistrate Raipur, District Raipur Chhattisgarh.

---- Respondents

For Petitioners	:	Shri BP Sharma, Advocate.
For Respondent No.1	:	Shri JK Gupta, Advocate.
For Respondent/State	:	Shri Vinod Tekam, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****24/10/2016**

1. The present petition under Section 482 CrPC has been filed assailing the two orders dated 18.04.2016 passed by the 9th Additional Sessions Judge, Raipur, in Revision Case No.451/2015 and the order dated 16.10.2015 passed by the Judicial Magistrate First Class, Raipur (for short, JMFC) in Criminal Case No.212 of 2013.
2. The grievance of the petitioners is that the respondent No.1 complainant had filed a complaint case under Section 138 of the Negotiable Instrument Act (for short, NI Act) before the court of JMFC, Raipur which was

registered as Criminal Case No.212 of 2013.

3. After completion of formalities as are otherwise required for registration of complaint case under Section 138 of NI Act, summons were ordered to be issued to the accused-petitioner herein. The petitioner entered appearance before the court below and got bail. Subsequently, vide order dated 16.10.2015 the JMFC, Raipur, framed the charge against the petitioners for the offence under Section 138 of NI Act.
4. This framing of charge was assailed by the petitioners by way of filing revision petition before the 9th Additional Sessions Judge, Raipur, which was registered as Revision Case No.451 of 2015. The revisional court also vide order dated 18.04.2016 rejected the revision petition affirming the order of JMFC, Raipur, framing the charge under Section 138 of NI Act leading to filing of this present petition.
5. Learned counsel appearing for the petitioners assailing the order of framing charge submits that the petitioner No.1 is the father of the petitioner No.2. The sole ground on which the petitioners intend to challenge framing of charge is the fact that the nature of dispute between the parties arose from an agreement which was entered into between the complainant-respondent and the petitioner No.2. As per the agreement, the petitioner No.2 had agreed to sale his house situated at Tikrapara, Raipur, to the complainant for an amount of Rs.35 Lakhs of which an amount of Rs. 11.30 Lakhs was paid as earnest money. Subsequently, the petitioner No.2 failed to honour the agreement and later on decided to return back the earnest money and for this a cheque bearing No.337251 of IDBI Bank Raipur, amounting to

Rs.12.50 Lakhs was given to the complainant. When the said cheque was put for realization, the same got dishonored on account of insufficiency of funds leading to filing of the complaint case by the respondent.

6. Contention of the petitioners is that, so far as the case against the petitioner No.2 is concerned, he has not issued any cheque to the complainant, and therefore, case under Section 138 of NI Act is not made out against him and so far as the petitioner No.1 is concerned, there was no agreement whatsoever between the petitioner No.1 and the complainant. In the absence of any agreement, there is no legally enforceable debt of the petitioner No.1 and as such no offence under Section 138 of NI Act is made out against the petitioner No.1 also.
7. It was next submitted that it is established position of law that the person who has issued the cheque, in any manner, is indebted to the complainant and in the present case the person who is allegedly indebted to the respondent No.1-complainant has not issued any cheque, and therefore, under either of the circumstances, the case against the petitioners will not be made out. Under these factual circumstances, counsel for the petitioners prayed for quashment of framing of charge as well as order of revisional court and prayed for discharge of the petitioners from the alleged offence.
8. Per contra, counsel for the respondent-complainant opposes the petition and submitted that at the stage of framing of charge all that the court has to see is whether there was a legally enforceable debt in favour of the respondent-complaint and in any discharge of the said debt whether any cheque was issued and in the event of cheque being issued, whether the

said cheque got dishonored on account of insufficiency of funds and lastly, whether before filing of the complaint case, the requisite formalities as is required under Section 138 of NI Act has been fulfilled or not.

9. According to respondent-complainant, from the factual matrix as has been narrated by the petitioners themselves, there is no dispute in respect of agreement being entered into between the petitioner No.2 and the respondent No.1. It is also not in dispute that the petitioner No.2 had received an amount of Rs.11.30 Lakhs as earnest money from the respondent No.1-complainant. Another admitted aspect is the issuance of cheque by the petitioner No.1 to the complainant towards discharge of the liability of repayment of the money which was received by the petitioner No.2 from the complainant. The petitioner No.1 also does not dispute the issuance of the cheque and his signature being on the said cheque. Dishonoring of the cheque on account of insufficiency of fund also is not denied or disputed by the petitioners. Thus, according to the respondent No.1-complainant, *prima facie* a case has been made before the court below to frame charge under Section 138 of NI Act, and as such the petition deserves to be rejected.
10. Having considered the rival contentions put forth on either side and on due appreciation, this court does not find any merit in the contentions put forth by the petitioners as the factual matrix of the case stands on the admitted position. The undisputed facts are that the petitioners themselves entered into an agreement between the petitioner No.2 and the complainant; the acceptance of earnest money by the petitioner No.2; subsequently issuance of cheque by the petitioner No.1 to satisfy the complainant for

refund of the money taken by the son of the petitioner No.1. The petitioner No.1 has accepted his signatures on the said cheque and the cheque getting dishonored on account of insufficiency of fund. Thus, this court has no hesitation in reaching to the conclusion that prima facie all the ingredients that are required for the registration of the complaint case and framing of charge is made out. All the other aspects which the petitioners intend to assail are his defence and which can only be looked into after the evidence of either side of the parties are adduced and which cannot be looked into at this stage of framing of charge.

11. Now, whether there is sufficient evidence and the said evidence are cogent enough to convict the accused, are all matter of evidence which could not and cannot be looked into by the court of law at the initial stage where the only consideration to be taken note of is whether prima facie offence is made out or not. For the purpose of framing of charge all that the Trial Court has to see is whether on the basis of the materials collected during the course of investigation a prima facie case is made out or not. Even if there is a strong case of suspicion made out even then the Court is justified in framing of the charge.
12. So far as the law under Section 482 CrPC is concerned, it is by now a well settled proposition, that while considering the case for quashing of the Criminal proceedings the court should not “kill a stillborn child” and appropriate prosecution should not be stifled unless there a compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegation have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the Court is whether

the uncontroverted allegation as made, prima facie establish the offence. At this stage neither can the Court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein.

13. In **Amit Kapoor Vs. Ramesh Chander and Anr**, (2012) 9 SCC 460, the Supreme Court has very clearly laid down the principle that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under the Code in relation to quashing of an FIR is circumscribed by the factum and caution afore noticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited. At the initial stage of framing of a charge, the court is concerned not with the proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not be applied at that stage.
14. This view has further been reiterated by the Supreme Court in the case of **Vinod Raghuvanshi Vs. Ajay Arora and others**, reported in (2013) 10 SCC 581, wherein it has been held :

“It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not “kill a stillborn child”, and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations

in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein. More so, the charge-sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 CrPC.”

15. In the case of **N. Soundaram Vs. P.K. Pounraj and Another**, reported in (2014) 10 SCC 616, the Supreme Court in paragraph 13 has categorically held that :

“**13.** It is well settled by this Court in a catena of cases that the power under Section 482 CrPC has to be exercised sparingly and cautiously to prevent the abuse of process of any court and to secure the ends of justice. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should refrain from giving a prima facie decision unless there are compelling circumstances to do so. Taking the allegations and the complaint as they were, without adding or subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the exercise of its power under Section 482 CrPC. An investigation should not be shut out at the threshold if the allegations have some substance.”

16. For the foregoing reasons and in view of the aforesaid legal pronouncements made by the Supreme Court, this Court is of the opinion that there is no illegality or infirmity committed by the Court below while framing of charge against the Petitioners calling for an interference invoking the extraordinary inherent powers under Section 482 CrPC conferred upon this Court.

17. The petition being devoid of merit thus is liable to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge