

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No. 650 of 2016**

Ajay Lalwani S/o Girdhan Lalwani Aged About 30 Years R/o Shivaji Ward,
Sindhi Colony Mungeli, P.S. Mungeli, Revenue District Mungeli, Civil District
Bilaspur, Chhattisgarh. [Accused]

---- **Petitioner**

Versus

Jayprakash Singh Parihar S/o Late Ramadhar Singh Parihar R/o Puran Post
Puran, P.S. Mungeli, Revenue District Mungeli, Civil District Bilaspur,
Chhattisgarh. [Complainant]

---- **Respondent**

For Petitioner	:	Shri PK Tulsyan, Advocate.
For Respondent	:	Shri Anish Tiwari, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

16/09/2016

1. The present petition under Section 482 Cr.P.C. has been preferred assailing the order dated 13.05.2016 passed by the Additional Sessions Judge, Mungeli, in Criminal Revision No.49/2015. Vide the said impugned order, the Sessions Judge has rejected the revision petition preferred by the petitioner herein affirming the order dated 18.11.2015 passed by the Judicial Magistrate First Class, Mungeli, in Criminal Complaint Case No.489/2014 rejecting the petitioner's prayer for deferring further cross examination of complainant's witness.
2. The relevant facts for adjudication of the present dispute is that, the respondent-claimant had filed a complaint case before the JMFC, Mungeli for initiating proceedings against the petitioner for the offence

under Section 138 of NI Act. The case of the respondent was that, the cheque which was issued by the petitioner in favour of the respondent for an amount of Rs.4 Lakhs when presented for clearance, got dishonored and after necessary compliance as is required under Section 138 of NI Act, the court below issued summons to the petitioner and in due course the matter was put to trial.

3. During the course of recording evidence, the Bank Officer, Hemsingh, Deputy Branch Manager, Punjab National Bank, Mungeli, appeared as a witness on behalf of the complainant. The said witness appeared before the court upon summons being issued to him from the court seeking his appearance. When the said witness had appeared before the court below, during the cross examination, he stated that he has not brought the entire records pertaining to the cheque which got dishonored.
4. At that stage, the petitioner requested the court below for deferring the further cross examination of the said witness with a request that it may be taken up tomorrow, the next day, so that the witness may bring all the relevant records in respect of alleged transaction of dishonoring of cheque before the court. The petitioner has also given an undertaking that he is ready to bear the expenses for calling upon the said witness again, but the court below rejected the said request on 18.11.2015.
5. The said order of court below dated 18.11.2015 was put to challenge by way of criminal revision before the Additional Sessions Judge, Mungeli where the case was registered as Criminal Revision No.49/2015 and the revisional court also vide order dated 13.05.2016

rejected the revision holding that the court below has not committed any illegality in rejecting the claim of the petitioner for deferring the matter for the next day with a direction to the said witness to come with entire records pertaining to the transaction in question. Both the courts below were of the view that in case if the petitioner-accused intends to lead evidence based on the records maintained at the Bank, he would be at liberty to call for the witness of the Bank along with documents that he intends to rely upon for his defence. It is this order i.e. rejection of revision dated 13.05.2016 leading to filing of this petition under Section 482 CrPC.

6. Learned counsel appearing for the petitioner submits that the court below has failed to take note of the fact that while the summons were issued for appearance before the court below, it was specifically mentioned in the summons itself to appear in the court with all the relevant records yet the Bank officer has appeared before the court without any relevant records. Some of the records were necessary for the purpose of effective cross examination of the complainant's witness. Since the Bank official has appeared before the court below without relevant records, the accused has not been able to effectively cross examine the witness. This, according to the petitioner amounts to denial of fair trial. It was next submitted that both the courts below have failed to appreciate the fact that the petitioner had offered that he is ready to bear the expenses for calling upon the said witness for further cross examination on the next day after the said witness brings in the entire records pertaining to the transaction in dispute. Thus, prayed for

quashing of two orders and also to remit the matter back to the trial court with a direction to recall the said witness namely Hemsingh and to proceed further with the trial.

7. Learned counsel for the respondent, however, opposes the petition and submitted that a plain reading of two orders under challenge by itself makes it clear that the court below had not passed the order which could be termed to be prejudicial to the interest of the petitioner. That, both the courts below have taken note of the fact that while the request of the petitioner was being turned down, it was observed that the petitioner accused would have liberty of calling such witness again while the evidence of defence witness was being recorded, and thus prayed for rejection of this petition.
8. Having heard the rival contentions put forth by either side and on perusal of orders impugned what is clearly reflected is that, it is a case where there are certain facts which are not disputed, particularly as regards issuance of cheque, dishonoring of the same, subsequently demand of notice being issued and on non payment of the said dues by the petitioner-accused, a case under Section 138 of NI Act was got registered against the petitioner. Another admitted factual position in the instant case is the fact that the said witness of the Bank Hemsingh had appeared before the court below as per the summons issued to him by the court. It is also not in dispute that in the summons it was categorically mentioned that the witness should appear before the court with all relevant records in respect of the transaction. The next admitted fact is that the witness Hemsingh had appeared before the

court as per the summons issued, however, when said Hemsingh appeared before the court, he had not brought the relevant records pertaining to dishonoring of the cheque involved in the instant case.

9. If in the absence of relevant records produced by the witness-Hemsingh, the accused person is forced to cross examine the said witness, then the same would amount to denial of fair trial. Another aspect which the court below ought to have considered is the fact that the petitioner had requested that the case may be taken up on the next day and as such no prejudice whatsoever would have caused to the complainant/respondent except for some delay in conclusion of the evidence on behalf of the complainant. It was also contended by the petitioner that if only the court below would have allowed the said request then, neither the nature of complaint would have had any adverse impact nor would it have caused any prejudice to the claim of the respondent-complainant. It is further necessary to mention that when the summons were issued, it was specifically mentioned in the summons that the witness should appear before the court with all relevant records in respect of transaction of dishonoring of cheque under dispute.
10. Both the courts below should have taken a more pragmatic view while deciding the case and should have considered the aspect of the relevancy in granting liberty to the petitioner-accused. It was also to be considered that the purpose of his being called again would not arise if he had appeared before the court below with all relevant records. Thus, in the opinion of this court, it is a fit case where the impugned

orders dated 18.11.2015 and order of revisional court dated 13.05.2016 deserve to be and are accordingly set aside.

11. The matter is remitted back to the court below with a specific direction to issue fresh summons to the witness Hemsingh, Deputy Branch Manager, Punjab National Bank, Mungeli, for further cross examination. It is made clear that the expenses for calling of the said witness of the Bank would have to be borne by the petitioner-accused as the said witness is being called at his instance.
12. It is also necessary to direct at this juncture that the trial court shall make all endeavors subject to co-operation of the complainant as well as the petitioner-accused for an early disposal of the trial itself.
13. With the aforesaid observations, the petition is allowed. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge

inder