

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 964 OF 2016

Shiv Kumar alias Jawahar Saraf S/o Motilal Saraf, Aged about 53 years, R/o Behind Motilal Petrol Pump, Link Road, PS Tarbahar, Bilaspur (CG).

... Petitioner

Versus

Ramavtar Agrawal S/o Shri Jagmohan Das Agrawal, aged about 52 years, R/o Agrawal Bhawan, Vidyanagar, PS Tarbahar, Bilaspur (CG).

... Respondent

For Petitioner.	:	Shri Sudhir Agrawal, Advocate.
For Respondent	:	Shri Prafull N Bharat and Shri Ankit Singhal, Advocates.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/09/2016

1. The present petition under Section 482 Cr.P.C. has been preferred seeking for quashment of order dated 18.07.2016 passed by the Sessions Judge, Bilaspur, in Criminal Revision No.94/2016. Vide the said impugned order, the Sessions Judge has rejected the revision petition thereby affirming the order dated 17.06.2016 passed by the Judicial Magistrate First Class, Bilaspur, who had rejected the petitioner's application under Section 251 CrPC.
2. The relevant facts for adjudication of the present dispute is that, the petitioner had issued a postdated cheque (No.251759) of Central Bank of India, Main Branch, Bilaspur, amounting to Rs.7.8 Crores in favour of the respondent towards discharge of the liability in respect of a property dealing between the two and

in respect of which there was an agreement dated 21.10.2014 entered into between them which has been enclosed in this petition as Ex. P/4. Subsequently, the petitioner did not discharge his liabilities towards the respondent. The cheque which was issued by the petitioner was put for encashment and the said cheque got dishonored by the Bank vide intimation dated 02.04.2015 with an endorsement of insufficient fund. A legal notice was sent on the same day i.e. 02.04.2015 by the respondent to the petitioner which was received by the petitioner somewhere on 9-10.04.2015. Service of legal notice stand proved as the petitioner has also replied to the legal notice on 15.04.2015 denying the claim put forth by the respondent. Since the petitioner did not make any payment to the respondent even after issuance of legal notice, the respondent had filed a complaint case before the JMFC, Bilaspur for initiating proceedings against the petitioner for the offence punishable under Section 138 of NI Act.

3. The JMFC after taking into consideration the evidence which have come on record, vide order dated 18.08.2015 took cognizance of the offence and registered a complaint case as criminal complaint case No.4664 of 2015.
4. On 07.05.2016, the petitioner moved an application under Section 251 CrPC for providing the particulars of offence disclosing the details of the liability and debt of the petitioner towards the respondent.

5. The said application was rejected by the JMFC, Bilaspur, vide its order dated 17.06.2016 (Annexure P/2). Against which, a revision petition was filed before the revisional court which was also rejected on 18.07.2016 holding the same to be devoid of merit and without substance leading to filing of this petition.
6. Learned counsel appearing for the petitioner assailing both the orders submits that the petitioner in the instant case has moved an application under Section 251 CrPC asking the court for providing particulars of offence in respect of existence of legally enforceable debt or liability of the petitioner towards the respondent and also on the ground that the petitioner has already moved before the Waqf Board against the same cause of action and for this reason also the proceeding may be differed.
7. A bare perusal of particular of the offence framed by the court on 14.03.2015 very clearly discloses the details of offence alleged to have been committed by the petitioner and this court does not find any illegality or infirmity on the part of JMFC while framing the same. Further, if we look into the provisions of Section 251 CrPC even then it would clearly indicate that the requirement under Section 251 CrPC has been duly made by the court below at the time of framing of particulars of the offence. One has also to see that the case before the JMFC is one under Section 138 of NI Act and ingredients required prima facie to make out an offence under Section 138 of NI Act is clearly reflected from the particulars of the offence framed by the trial court.

8. This court does not find any ambiguity or vagueness in the framing of said particulars of the offence. It has all the substances of an accusation in it. The order rejecting the application under Section 251 CrPC on 17.06.2016 (Annexure P/2) is a well reasoned and speaking order and no illegality or infirmity has been committed by the JMFC while rejecting the said application filed by the petitioner.
9. Therefore, both the orders i.e. order of JMFC dated 17.06.2016 as also the order of revisional court dated 18.07.2016 do not warrant any interference of this court invoking the inherent discretionary powers conferred under Section 482 CrPC.
10. Accordingly, the petition being devoid of merit and without any substance deserves to be and is accordingly dismissed in limine.

**Sd/-
(P. Sam Koshy)
Judge**

inder