NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No. 1086 of 2016

M/s Harsh Enterprises, Proprietor Rajkumar Agrawal, aged about 62 years, in front of house of Brijmohan Agrawal, Ramsagarpara, Raipur (CG)

---- Petitioner

Versus

M/s Khandelwal Traders, Proprietor Arvind Bhangla, Bhangla Cottage, near Purana Union Bank Jawahar Nagar, Police Station Modhapara, Tehsil & District Raipur (CG)

---- Respondent

For Petitioner	:	Shri B. P. Sharma along with Shri Sameer Oraon, Advocate

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Hon'ble Shri Justice P. Sam Koshy

Order On Board

30.09.2016

By way of the present petition under section 482 CrPC the petitioner intends to assail the order dated 27.08.2016 passed by the Additional Session Judge, Raipur in Criminal Revision No. 236 of 2016 whereby the revision petition preferred by the petitioner against the rejection of the application under Section 91 (1) (2) CrPC has been rejected.

2. Brief facts of the case are that the respondent-complainant had filed a complaint case against the petitioner under the provisions of 138 of Negotiable of Instrument Act (hereinafter referred as “NI Act”). During the proceeding before the trial Court, the petitioner had filed an application dated 14.01.2016 under Section 91 (1) & (2) of CrPC seeking for a direction to the Deputy Commissioner, Commercial Tax department, Raipur for providing the audited balance sheet of the respondent-complainant for the year 2008-09. The said application was rejected by the JMFC, Raipur on 17.06.2016. While rejecting the application on 17.06.2016, the learned Magistrate found that the said documents may not be necessary for adjudication of the proceedings under Section 138 of NI Act. The Magistrate also found the documents not to be of much relevance in deciding the issue involved in the case.

3. The said order dated 17.06.2016 was put to challenge by way of a revision petition before the Additional Sessions Judge, Raipur wherein the case was registered as Criminal Revision No. 236 of 2016. The Revisional Court also vide impugned order dated 27.08.2016 found no strong case has been made out for interfering with the order of the trial Court. The Revisional Court also found the said application of the petitioner to be at the premature stage and the petitioner could have placed it in the course of evidence. Accordingly, the Revisional Court rejected the revision petition preferred by the petitioner vide its order dated 27.08.2016.

4. It is these two orders of the Court below which have been assailed by the petitioner in the present petition under Section 482 CrPC.

5. A bare perusal of the order dated 17.06.2016 passed by the JMFC while rejecting the application under Section 91 (1) & (2) CrPC filed by the petitioner it reflects that earlier also on two occasions, two separate applications under Section 91 CrPC had been filed by the petitioner; one on 30.01.2014 asking the complainant to produce the balance sheet of the relevant year and another on 20.02.2014 to produce the income tax details and the Bank passbook of the complainant. Both these applications were rejected by the trial Court. Subsequently, the petitioner had also preferred two revision petitions against the said two orders before the 4th Additional Sessions Jude, Raipur and the 7th Additional Sessions Judge, Raipur and both of which were rejected on 05.12.2014 and 16.03.2016 respectively.

6. When the petitioner could not succeed in calling for the records either from the respondent-complainant or from the Income Tax Department and the Bank, the petitioner moved a fresh application seeking for a direction to the Commercial Tax Department for providing the same documents.

7. The facts stated in the preceding paragraphs clearly reflect that the petitioner has been trying to obtain the same documents from different departments by moving repeated applications under Section 91 of CrPC. The initial two applications wherein also the same documents had been sought have already been decided by the Magistrate as well as by the Revisional Courts and the petitioner has not challenged those orders any further. Thus, those orders in due course of time attained finality.

8. It is also pertinent to note that it is a proceeding under Section 138 of NI Act where the dispute primarily is between the person who had issued the cheque and the person who had received the said cheque where on putting the same for clearance it got dishonoured on account of insufficient fund. A proceeding under Section 138 NI Act cannot be converted into a routine civil suit. A case under Section 138 NI Act which has to be adjudicated purely under the provisions of Negotiable Instrument Act.

9. A perusal of the proceedings in the instant case would clearly reflect that the petitioner is trying to get the same relief repeatedly by moving repeated applications with the only difference of changing the authorities from which the directions have to be issued which in the opinion of this Court is nothing but a misuse of the process of law. Thus, this Court does not find any illegality or infirmity on the part of the JMFC in rejecting the application under Section 91 (1) & (2) CrPC and the subsequent rejection of the revision petition by the Revisional Court vide impugned order dated 27.08.2016.

10. Thus, the present CrMP being devoid of merit deserves to be and is accordingly dismissed.

Sd/-

P. Sam Koshy

Judge

Bhola