

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 433 of 2014**

- Smt. Jaishri Chauhan W/o Shri Rajesh Chauhan Aged About 44 Years Proprietor, M/s Chauhan Automotive, Station Road, Durg, R/o Mig 2338, Housing Colony, Industrial Area, Bhilai, Distt. Durg. C.G.

---- Petitioner**Versus**

1. Rajesh Sharma S/o Shri Bhusan Lal Sharma Aged About 41 Years R/o 192, New Khursipaar, P.S. Khursipaar, Bhilai, Tahsil & Distt. Durg. C.G.
2. The State Of Chhattisgarh Through The District Magistrate, Durg, Distt. Durg. C.G.

---- Respondents

For Petitioner	:	Shri Kishore Bhaduri and Shri Pawan Kesharwani, Advocates
For Respondent No.1	:	None appears though served
For Respondent No.2/State	:	Shri U.N.S. Deo, Government Advocate

Hon'ble Thottathil B. Radhakrishnan, Chief Justice**Order on Board****05.12.2017**

1. Heard the learned Counsel for the Petitioner and the learned Government Advocate. The private respondent, though served, is not represented.
2. This is an application filed under Article 227 of the Constitution of India challenging the order passed by the Court of Sessions in a revision petition under Section 397 of the Cr.P.C. The matter arises in the course of a trial on a complaint instituted alleging commission of offence punishable under Section 138 of the Negotiable of Instrument Act.
3. Going by the materials now before me, what appears is that the 1st Respondent lodged a complaint on the basis of the allegation that a cheque issued to him by the Petitioner was dishonoured. The defence of the writ petitioner who is the

accused appears to be that she is engaged in business; that the complainant was her employee and there was no occasion for him to lend money to her. It is her further case that the complainant had misused a signed blank cheque kept by her in the course of her business. In support of her defence, an application was filed requiring the complainant to file his liquor license and income tax return; may be to disclose his source of income. This was allowed. It appears that later the complainant filed an affidavit saying that he has lost the documents from his custody. In the common course of judicial work, it would have been appropriate situation for the trial Court to proceed with the trial and draw appropriate inferences, if any, that may be available, in accordance with law and conclude the matter one way or the other. Instead, the trial Court, that too a criminal court, recalled and reviewed its earlier order. Thereby the earlier direction to produce documents stood recalled. This was challenged by the accused before the Court of Session in the revision petition under Section 397 of the Cr.P.C. The revisional Court took the view that the accused – revision petitioner was only trying to delay the proceedings before the trial Court. The revision petition was accordingly dismissed.

4. When documents are summoned to be produced, it will be open to parties to either produce the document or to file affidavit regarding the documents which are summoned. The said person will be open for scrutiny regarding any such affidavit. The trial Court, in the given set of circumstances, could have permitted the trial to continue by affording the accused further opportunity to cross-examine the complainant, pointedly, on the issue regarding the source of income, also, if needed, with reference to the income tax returns or licence or liquor license, at least on the question whether such documents were actually available at any point of time. Ends of justice require such course to be followed to lead the criminal case pending before the trial Court to reach its logical conclusion.

5. It is seen that on the basis of interlocutory orders issued by this Court, the disposal of that matter is still held up. Though the 1st Respondent does not appear here, taking into consideration the entire facts and circumstances of the case and the materials on record and the orders impugned in this writ petition, this is an abundantly fit case to exercise jurisdiction under Article 227 of the Constitution to put the proceedings in the due and proper line to lead to just and reasonable conclusion of its trial at the earliest.
6. In the result, the impugned order passed by the Court of Sessions in the revision and the order passed by the trial Court which led to the revision are set aside paving way for the trial Court to further proceed with the matter in the light of what is stated above and in accordance with law.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice