

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1422 of 2016**

- Praveen Kumar Chopra S/o Lt. Indrajeet Chopra, Aged About 60 Years
R/o Quartet No. 16/ A, K-Pocket, Maroda Sector, Bhilai, Tahsil & District Durg, Chhattisgarh.

---- Petitioner**Versus**

- Subhash Chandra Dubey S/o Tilak Ram Dubey, Aged About 63 Years
R/o B-8, Vijay Complex, Fruit Market, Camp 2, Bhilai, Police Station Chavani, Tahsil & District Durg, Chhattisgarh.

---- Respondent

For Petitioner:	Mr. Rakesh Thakur, Advocate
For Respondent:	Mr. Jitendra Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****15.02.2017**

1. The Present Cr.M.P. has been preferred assailing the order dated 12.09.2014 passed by the Sixth Additional Sessions Judge, Durg whereby the Revision Petition preferred by the Respondent against the order dated 20.06.2014 passed by the JMFC Durg in complaint case No. 251/2011, has been allowed and have dismissed the complaint of the present Petitioner holding the case to have become abated.
2. The relevant facts necessary for the decision of the present Cr.M.P. is that the wife of the Present Petitioner had filed complaint case before JMFC registered as complaint case 251/2011 under the provision of Section 138 of the NI Act. The case of the complainant was that the Respondent had taken Rs. 2.75 lakh for his personal use. When the said amount was demanded a cheque was issued by the respondent herein in favour of Anju Chopta for an amount of Rs. 2.75

lakh which got dishonored on presentation before the bank on the ground of insufficient funds. Immediately thereafter the Respondent was served with a legal notice and when no response was received from the Respondent, a complaint case was filed before the JMFC, Durg. Pending the complaint case before the JMFC, Durg the original complainant Anju Chopda died on 28.12.2012. Immediately thereafter on 07.10.2013 the Counsel appearing for the original complainant Anju Chopda moved an application seeking leave to permit the name of the present Petitioner be substituted in place of the original complaint in the light of her death. Subsequently, the Respondent herein submitted an affidavit before the Court on 31.08.2013 intimating the Court that since the complainant has expired the Respondent may be discharged and the order be passed dismissing the complaint as having abated.

3. The application dated 07.10.2013 was listed before the Court on 6.12.2013, 4.3.2014, 15.5.2014, 16.5.2014 and 6.12.2014 and finally vide order dated 20.06.2014 the Court allowed the application filed by Counsel for the original complainant Anju Chopda for substitution of present Petitioner in place of his wife.
4. It is this order dated 20.06.2014 which was put to challenge before the Revisional Court i.e. 6th Additional Sessions Judge, district Durg whereby the case has been registered as Criminal Revision No. 157/2014. The Revisional Court taking into consideration the factual matrix of the case reached to the conclusion that the order dated 20.06.2014 by the Magistrate allowing the Petitioner to be substituted in place of his wife the original complaint was bad in law. According to the Revisional Court the Petitioner herein was granted sufficient time for appearing before the Court below or for executing Vakalatnama in favour of the lawyer or moving proper application duly signed seeking substitution. In the absence of any such efforts being made by the

Petitioner herein allowing of the application on 20.06.2014 was bad in law. The Revisional Court held that the complaint case since by efflux of time stood abated hence quashed the complaint case vide order dated 12.09.2014. It is this order dated 12.09.2014 which is under challenge in the present Petition.

5. Learned Counsel for the Petitioner submits that on 7.10.2013 he had contacted his lawyer and had moved an application itself proves that the Petitioner had taken prompt steps for substitution of the name of the Petitioner in place of the original complainant his wife who had since expired. On 20.06.2014 itself the Court below granted permission to file a memo of appearance on behalf of the present Petitioner and immediately the Petitioner executed a memo in favour of the lawyer which was also filed on 24.06.2014 as is reflected from the order sheet dated 24.06.2014 the default as such stood cured during the pendency of the complaint case before the Trial Court and also stood cured much before the passing of the impugned order by the Revisional Court. Learned Counsel for the Petitioner submits that Revisional Court should have been more practical and should have taken a pragmatic view on the complaint case as the Petitioner should not be rendered remedyless for the fraud committed by the Respondent. Now the Respondents wants to take advantage of the technicalities of the criminal proceeding which would not be in the interest of justice and rather would amount to misuse of the process of law.
6. He further submits that so far as the non filing of the memo by the present Petitioner is concerned the same was already cured by the Petitioner and which could be revealed from the order dated 24.06.2014 on which date the Counsel appointed appeared before Court below and filed his Vakalatnama / power. Thus there is no

reason why Revisional Court should have set aside the order vide 20.06.2014.

7. However Shri Gupta opposing the Petition at this juncture referring Section 256 of the Cr.P.C. which deals with the non appearance or death of the complainant submits that the Petitioner herein was granted ample opportunity and time from 31.08.2013 till 20.06.2014 within this period there was no effort made by the Petitioner for substitution. The Court below was right while allowing the Review Petition holding that the Magistrate has not complied with the provision of law strictly. He further submits that the Magistrate should not have entertained the application of the Petitioner at all particularly when the same was not supported with a Vakalatnama or memo executed in favour of the lawyer appearing for the original complainant. He further submits that on the death of the original complainant, lawyer appearing for the Anju Chopda should not be allowed to appear when there was no memo executed by the present Petitioner and thus prayed for the rejection of the present Petition holding it to be devoid of merits.
8. Having considered the rival contention put forth on either side and on perusal of record indisputably the original complainant Anju Chopda died on 28.12.2012. The intimation in this regard was placed before the Magistrate on 31.08.2013. Thereafter an application on behalf of the Petitioner was filed on 7.10.2013. the only lacunae or the defect which could be taken note of was that the application dated 7.10.2013 was not supported with an affidavit of the present Petitioner and was also not supported with a duly executed Vakalatnama / memo of appearance. What is more relevant to be considered at this juncture is that these defects which was pointed out are curable defects. The curable defects should not be used as a ground for rejection of the entire complaint case because it is the fault which would not be

detrimental to the merits of the dispute. The Magistrate at the first instance had ordered for filing Vakalatnama or memo in this regard or for an application to be filed in this regard. Thereafter the objection for the first time was raised by the Respondent accused on 20.6.2014 on which date itself the Court below accepting the same to be a technical flaw directed the Petitioner for filing appropriate memo in this regard and the default also stood cured on 24.06.2014 itself. Thus on the date when the Revision was filed or was being heard finally the defect did not exist at all. The Revisional Court ought to have taken a more pragmatic view and should not have rendered the Petitioner remedy less in respect of a grievance which was raised by his wife who unfortunately died.

9. Thus, the hyper technical objection raised by the Respondents is not sustainable. The Impugned order dated 12.09.2014 thus not sustainable, the same accordingly is set aside /quashed. The matter is remitted back to the Judicial Magistrate, First Class Durg to proceed further from the stage it was last fixed before the impugned order dated 12.09.2014 was passed by the Revisional Court.
10. Taking into consideration the dispute having been filed in the year 2011, it is expected that the matter shall be disposed off giving due priority to the present case as early as possible.
11. With the aforesaid observation the present Cr.M.P. stands disposed off.

Sd/-

(P. Sam Koshy)
JUDGE