

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 1413 of 2017

Abhay Mishra S/o Rakesh Mishra, Aged About 27 Years R/o Gandhi Chowk,
Balodabazar, District Balodabazar-Bhatapara, Chhattisgarh

---- Petitioner

Versus

Amit Koshley S/o Sadashiv Koshley, Aged About 24 Years R/o House No.428,
Koshley Complex, Lawan Road, Balodabazar, District Balodabazar-
Bhatapara, Chhattisgarh

-----Respondent

For Petitioner : Mr. Apoorva Tripathi, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

09/10/2017

Heard.

1. It is submitted by the counsel for the petitioner that petitioner has filed a complaint against the respondent for prosecution in offence under Section 138 of Negotiable Instrument Act, 1881. The trial Court has instead of taking cognizance and proceeding on the complaint has passed the impugned order dated 22.07.2017, posting the case for recording of statement of witnesses prior to taking cognizance and registration. It is submitted that a complaint under Section 138 of Negotiable Instrument Act is to be tried as summons case, hence the proceeding adopted by the trial Court is uncalled for. Hence, this petition.

2. I have heard the counsel for the petitioner and perused the documents placed on record.
3. Section 142 of Negotiable Instrument Act, 1881 specifically provides the manner, in which the Court shall take cognizance upon filing a written complaint within limitation. This is specific direction under the provisions that Court shall be empowered to take cognizance of any offence under Section 138 of Negotiable Instrument Act, only on the basis of the filing of complaint in writing alongwith necessary affidavit as provided under Section 145 of Negotiable Instrument Act. Although procedure for trial of complaint cases is applicable in such cases, but clearly the punishment provided under Section 138 of Negotiable Instrument Act, places it in the category of summons cases for which there is no specific procedure, provided under the Code of Criminal Procedure for the requirement of recording of statements before taking cognizance of offence as is provided for the cases for warrant trial. Hence, for these reasons, the proceedings adopted by the trial Court does not conform to any of the law provided. Hence for these reasons, this petition is allowed at the motion stage without issuance of any notice to the respondent.
4. The Trial Court is directed to consider of taking cognizable offence and registering the case and to proceed in accordance with the law.
5. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram