

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr. M. P. No. 1013 of 2016**

Sundar Das Rohra S/o Late Paras Ram Rohra, aged about 48 years (Wrongly mentioned as Sundar Lal Rohra in the cause title) R/o Imlipara, in front of Muslim Saray, Police Station- Civil Line, Bilaspur, Tehsil- Bilaspur, Revenue & Civil District- Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. Rupesh Jivnani S/o Santosh Jivani, aged about 30 years, R/o Hemu Nagar, near mini Bakery, Police Station Torwa, Tehsil- Bilaspur, Revenue & Civil District- Bilaspur, Chhattisgarh.
2. I.C.I.C.I. Bank through Branch Manager, Branch Office, Mangla Chowk, Police Station- Civil Line Bilaspur, Tehsil- Bilaspur, Revenue & Civil District- Bilaspur, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Surfaraj Khan, Advocate
For Respondent No.1	:	Shri Mukesh Sharma, Advocate
For Respondent No.2	:	Smt. Fouzia Mirza, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****04/01/2017**

The present petition has been preferred assailing the order of the Sessions Judge, Bilaspur decided on 25.07.2016 in Criminal Revision No. 99/2016 upholding the order dated 21.03.2016 passed by the JMFC, Bilaspur in an unregistered complaint whereby the application under Section 200 CrPC preferred by the petitioner against respondent no.1 for commission of offence under Section 420, 467, 468/34 was rejected.

2. The case of the petitioner is that respondent no.1 had borrowed certain money from the petitioner and in turn he had issued a cheque of ICICI bank for an amount of rupees 1.74 lakhs. The said cheque was put for clearance on 22.07.2013 in the Union Bank of India. Next day i.e. 23.07.2013 the said cheque was cleared and an amount of Rs.1,74,000/-

was credited in the bank account of the petitioner. Subsequently, the said amount was debited from the account of the petitioner on account of the signature on the cheque not tallying with the specimen signature.

3. According to the petitioner, in spite of repeated efforts he failed in contacting respondent no.1 and therefore, he was left with no other option but to file a complaint under Section 200 of CrPC before the Magistrate for registering a case for the offence under Sections 420, 467 & 468/34 of IPC. However, the Magistrate vide its order dated 21.03.2016 rejected the complaint on the ground that the facts which have been brought on record appear to have been a case where the bank has rectified the clerical error occurred on their behalf wherein without verifying the specimen signature of respondent no.1, the bank had credited the amount in the account of the petitioner and on realizing the mistake, they immediately rectified the same by debiting the said amount from the account of the petitioner.

4. Against the said order of the Magistrate dated 21.03.2016, the petitioner preferred a revision petition registered as Criminal Revision No. 99 of 2016. The Revisional Court vide its order dated 25.07.2016 rejected the revision petition holding that there is no illegality or infirmity on the part of the Magistrate in rejecting the complaint. The Revisional Court also held that the petitioner would have all the right to seek other criminal and civil remedy which is applicable as per law.

5. It is these two orders which are under challenge in the present petition.

6. Counsel for the petitioner submits that it is a case where respondent no.1 had either deliberately or with mala fide intention had issued the cheque with wrong signature and when the same was put for clearance, the amount was initially credited in the account of the petitioner but subsequently, the said amount was debited from his account on account of

not tallying the signature. This shows that respondent no.1 has in fact cheated the petitioner by issuing a cheque with wrong signature on it. According to the counsel for the petitioner, since the cheque has not been honoured by the bank on account of the signature not tallying with the specimen signature, it is not a case where the petitioner can file a complaint under Section 138 of Negotiable Instrument Act and therefore, the petitioner should not be rendered remediless.

7. Counsel for respondent no.2 has filed their reply wherein they have stated that the action on the part of the respondent no.2 was only rectification when it was found that the specimen signature of respondent no.1 was not tallying with the signature on the cheque. Counsel for respondent no.2 further submits that all that respondent no.2 has done was purely under the banking laws that was applicable where the rectification has been done by the officers of respondent no.2 only on account of the signature on the cheque not being matched with the specimen signature of respondent no.1.

8. Counsel for respondent no.1 submits that if the cheque has been returned on account of the signature not tallying, the petitioner should have issued notice to respondent no.1 and only then should have proceeded further, but the petitioner has not done so. He submits that on account of dismissal of the complaint under Section 200 CrPC, the complainant would not be remediless as there is still the civil remedy available to him and he can file proper civil suit for recovery of the money which was due from respondent no.1. Counsel for respondent no.1 also submits that it is a case where the petitioner could have issued a notice to respondent no.1 for issuance of a fresh cheque with a proper signature which has also not been done on the part of the petitioner and therefore the present petition deserves to be rejected.

9. Having considered the rival contentions put forth by the counsel for the parties and on perusal of the record as well as the order of the Courts below what clearly reflects is undisputedly respondent no.1 had issued a cheque of ICICI bank to the petitioner for an amount of Rs.1,74,000/- which was presented for clearance before the Union Bank of India, Bilaspur. The bank of the petitioner sent for clearance the said cheque at the bank of respondent no.1. Respondent no.2 the banker of respondent no.1 had admittedly credited the amount in the account of the petitioner on 23.07.2013. However, on the same day, the said amount was further debited from the account of the petitioner by respondent no.2 finding the signature put on the cheque not matching with the specimen signature of respondent no.1.

10. With the aforesaid undisputed facts what clearly is left to be decided is that whether respondent no.1 had bonafidely issued the cheque to the petitioner or not? Whether respondent no.1 has tried to cheat the petitioner or not? Whether in case, if proved the cheating on the part of respondent no.1, the offence under Section 420 IPC is made out against respondent no.1 or not? The two Courts below have predominantly considered the case from the aspect of the respondent no.2 debiting the amount from the account of the petitioner after realizing the clerical error on the part of respondent no.2 but have not discussed anything so far as the alleged mala fide act on the part of respondent no.1 is concerned. This aspect ought to have been considered by the Magistrate before rejecting the complaint at the threshold.

11. Thus, this Court is of the opinion that the matter deserves to be sent back to the JMFC, Bilaspur who in turn shall consider this aspect against the respondent no.1 if prima facie sufficient materials have been brought on record.

12. Accordingly, the order of the JMFC, Bilaspur dated 21.03.2016 dismissing the application under Section 200 CrPC and also the order of the Revisional Court dated 25.07.2016 passed in Criminal Revision No. 99/2016 are set aside and the matter is sent back to the JMFC, Bilaspur who in turn shall consider the observations made by this Court in the preceding paragraphs and pass a fresh order only so far as the case against respondent no.1 is concerned.

13. It is made clear that the Court below shall not be in any manner influenced by the finding of this Court in the present case while deciding the matter and shall pass an appropriate order strictly in accordance with law and the materials that have been placed before it for consideration.

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