

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 254 of 2017

- Dinesh Agrawal S/o Late Kishan Lal Agrawal Proprietor - Dinesh Enterprises, R/o E- 424, Behind Goyal Nursing Home, Radhakrishna Mandir Road, Samta Colony, Raipur, Chhattisgarh. 9981169306

---- Petitioner (Accused)

Versus

- Suresh Kumar Mahapatra S/o Late Shri Goverdhan Mahapatra R/o Shivanand Nagar, Sector- 3, Kargil Chowk, Shrinagar, Khamtarai, Raipur, Chhattisgarh.

---- Respondent

For Petitioner : Shri D.K. Gwalre, Advocate

Hon'ble The Acting Chief Justice

Order On Board

27/02/2017

1. The petitioner has filed this petition under Section 482 Cr.P.C. impugning the order dated 28.1.2017 passed by the 3rd Additional Sessions Judge, Raipur in Criminal Revision No.33/2017 dismissing the revision as not maintainable filed by the petitioner against the order dated 26.11.2016 passed by the Judicial Magistrate 1st Class, Raipur in Criminal Complaint Case No.780/16 rejecting the application of the petitioner filed under Section 91 Cr.P.C.
2. Facts of the case, in brief, are that the respondent herein filed a complaint case under Section 138 of the Negotiable Instruments Act, 1881 (henceforth 'the Act of 1881') *inter alia* pleading that the complainant/respondent is engaged in the business of finance, he advanced a loan of Rs.1 Lakh to the petitioner and in lieu thereof the

petitioner issued a cheque bearing No.222411 dated 17.2.2016 drawn on ICICI Bank in favour of the complainant. It is further stated by the complainant / respondent that on presentation of said cheque for encashment, it was not encashed and thus it was dishonoured with an endorsement that the accused/petitioner had no requisite amount to his credit in his bank account. The complainant/respondent therefore, through his counsel, served a registered notice dated 26.2.2016 on the accused/petitioner, which was duly served on him on 29.2.2016, demanding the cheque amount within 15 days from the receipt of the notice. The accused/petitioner herein did not comply with the notice but sent a reply dated 12.3.2016 making false allegations. The complainant/respondent, therefore, filed the complaint under Section 138 of the Act of 1881.

During the pendency of proceedings, on 9.8.2016 the accused/petitioner filed an application under Section 91 Cr.P.C. for directing the complainant/respondent to supply the balance sheets of M/s Goverdhan Mahapatra & Sons from the year 2013 to 2016, details of bank account, passbook, income tax returns, copy of money lender's license and all other relevant documents as filed by the complaint along with the complaint, to the petitioner. The complainant orally objected this application by stating that the documents necessary for adjudication of the matter have already been filed.

3. The trial Court after hearing the arguments of the parties rejected the said application on the ground that present proceeding is primarily based upon issuance and dishonour of the cheque issued under the signature of the accused and unless the contrary is proved, it shall be presumed that the cheque was issued for discharging any liability. It has also been held that the complainant has already filed the necessary documents along with the

complaint and the documents sought to be summoned by the accused are not necessary or desirable for the just decision of the case. Feeling aggrieved therewith the petitioner has preferred a criminal revision and the same has also been dismissed as not maintainable by the revisional Court on the ground that the order passed by the trial Court refusing to summon the documents under Section 91 CrPC was interlocutory order and as such, the revision against that order is clearly barred under the law. It is these orders which have been challenged by the petitioner in this petition under Section 482 Cr.P.C.

4. I have heard counsel for the petitioner and perused the impugned orders.
5. A bare glance of Section 91 Cr. P.C. discloses that this section empowers a Court to summon or order production of any document which it thinks necessary or desirable for the purpose of inquiry or trial. In other words, the *sine qua non* of an order under this section is a consideration by the Court that the production of documents concerned is desirable and necessary to the case. The accused under Section 91 Cr. P.C. cannot ask the production of documents as a matter of right and if upon satisfying itself that the document has no bearing, the Court is well within its powers to decline the prayer and the same can be deemed that it has exercised its discretion judiciously.
6. Present proceeding i.e. case U/s 138 of the Act of 1881, is primarily based upon issuance and dishonour of cheque under signature of accused/petitioner and in the light of presumption under Section 139 of the Act of 1881, the complainant / respondent has only to prove that the cheque was drawn under the signature of accused for discharge of any liability, the same was not encashed on its presentation and despite notice the amount was not paid to him by the accused. In this situation, the documents sought to be summoned by the petitioner cannot be said to be necessary

or desirable for the just decision of the case.

7. So far as the order passed by the revisional Court is concerned, it is well settled law that an order on application under Section 91 CrPC is interlocutory in nature and a revision against such order is barred under Section 397 Cr.P.C. In the present case also, the trial Court vide order dated 26.11.2016 did not in any manner decide anything finally and therefore the said order rejecting the application filed under Section 91 CrPC was the order of interlocutory nature and being so, the revisional court has rightly dismissed the revision as not maintainable.
8. On the basis of above discussion, this Court is of the considered opinion that there is no illegality or perversity in the order passed by the trial Court warranting interference by this Court. Accordingly, the petition being devoid of any substance is liable to be dismissed and is hereby dismissed at the admission stage itself.

Sd/-
(Pritinker Diwaker)
Ag. Chief Justice

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