

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 394 of 2016

Vijendra Bhatnagar, S/o. Late Ramsharan Bhatnagar, Aged About 44 Years, R/o. Office - Pushpat Apartment, Shop No. 3, In Front Of Government J. Narayan Higher Secondary School - Chhotapara, Raipur, Tahsil And Distt. Raipur Chhattisgarh.

---- Petitioner

Versus

R. B. Bhagat, S/o. Shri Shivpujan Bhagat, Aged About 65 Years, R/o. 317, Near Gol Chauk, Rohinipuram, P.S. D.D. Nagar, Raipur, Tahsil, Civil and Rev. Distt. Raipur Chhattisgarh.

-----Respondents

For Petitioner	: Mr. Malay Kumar Bhaduri, Advocate
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For Respondent	: Mr. Raghavendra Pradhan, Advocate
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Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

13/07/2017

Heard.

1. This petition under Section 482 of Cr.P.C. has been brought with prayer to set-aside the order dated 11.12.2015, passed by 7th Additional Sessions Judge, Raipur, in Criminal Revision No.361/2015.
2. Respondent filed a complaint against the petitioner, in which trial Court by an order dated 14.08.2015 has taken cognizance for offence U/s. 138 of Negotiable Instrument Act against petitioner and ordered for his appearance.
3. It is submitted by counsel for petitioner that one objection was filed by petitioner, which was not decided by the trial Court and substance of accusation has been read out against him by the order dated 14.08.2015. It is submitted that trial Court should have decided the objection either way before reading the substance of accusation against the petitioner.

4. The said order was challenged in revision petition No.361/2015, which has been decided by the revisional Court vide impugned order dated 11.12.2015 by which the revision filed the petitioner has been dismissed. It is submitted that order passed by the Court below suffers from legal infirmity, which may be set-aside and trial Court may be directed to consider and decide the objection of the petitioner at first.
5. Counsel for the respondent has opposed the submission made on behalf of the petitioner and submitted that objection made by the petitioner was decided by the trial Court by order dated 05.05.2015. This order was never challenged and after a lapse of time, the substance of accusation were read out to the petitioner on 14.08.2015. Hence petitioner has no locus-standi to challenge the order dated 05.05.2015.
6. Petitioner has placed his reliance on the judgment of Andhra Pradesh High Court in case of *Samuel Rajendram Maisa Vs. K. Krishna Rao and another, reported in 1998 Cri.L.J. 231* in which it was held that when an accused appears before the Magistrate in response to the summons in complaint case, he can raise objection to maintainability of the complaint and when such objection on maintainability is raised, the same should be decided first before taking any further steps.
7. On perusing preliminary objection filed by the petitioner it appears that petitioner took a stand in that objection that respondent took blank signed cheques from the petitioner as a security for the loan advanced to him. Secondly petitioner has repaid the loan advanced to him by respondent/complainant by making payment to the wife of complainant on various occasions. After completely repaying the loan, petitioner asked for return of blank cheques, which were not returned to him and

cheque has been misused.

8. Deciding the objection, the trial Court by order dated 05.05.2015 held that grounds taken in preliminary objection can be raised in defence and the application of preliminary objection was dismissed. The contention of the petitioner that his preliminary objection was not decided by the trial Court is primarily incorrect because in order dated 05.05.2015, it clearly speaks that application was rejected. Secondly, it is also apparent that no specific challenge was made against the order dated 05.05.2015, whereas the revision was preferred against the order dated 14.08.2015 in which substance of accusation were read out to the petitioner. On perusing the impugned order dated 11.12.2015, it is apparent that ground of non-consideration of preliminary objection was not raised before the revisional Court.
9. The contents of preliminary objection as mentioned in paragraph above clearly indicate that statement made by the petitioner in this respect shall be needed to be proved by production of evidence. Hence no error was committed by the trial Court in passing the order dated 05.05.2015 that grounds raised in the preliminary objection can be considered, if raised in defence. Further the objection raised by petitioner can not be considered as legal or technical objection, which needs to be decided first. Hence on the basis of discussion made above, the conclusion is drawn that this petition is devoid of merit and it is dismissed accordingly at the motion stage.

Sd/-
(Rajendra Chandra Singh Samant)
Judge