

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 640 of 2017**

- Ram Singh Nayak S/o Late B.L. Nayak, Aged About 55 Years Occupation Private Service, R/o Behind Sheetla Mandir, Shanti Vihar Colony, Daganiya, District Raipur, Chhattisgarh.

---- Petitioner

Versus

- Vyas Pathak S/o Kanti Kumar Pathak, Aged About 38 Years R/o Amhadji Colony, Civil Lines, Police Station City Kotwali, Raipur, District Raipur, Chhattisgarh.

---- Respondent

For Petitioner : Shri C.K. Sahu, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****09/11/2017**

1. Heard.
2. The present petition is against the order dated 20.02.2017 passed by the Additional Sessions Judge, Raipur in CRR No.339/2016, wherein the order dated 15.06.2016 passed in complaint Case No.280/2012 by the JMFC, Raipur has been affirmed.
3. The brief facts are that a complaint was filed by the respondent under Section 138 of the Negotiable Instruments Act, as the cheque was bounced and after the service of the notice, the petitioner entered appearance and filed an application to get the cheque examined by any hand-writing expert that the dates have been subsequently filled in. The said application was rejected by the JMFC, having challenged the same before the Additional

Sessions Judge, the said order of rejection was affirmed, therefore, the instant petition.

4. Learned counsel for the petitioner would submit that the cheque, date and the amount in the cheque was subsequently filled, therefore, that requires to be proved by the evidence of the hand-writing expert and in absence of the hand-writing expert, no finding can be arrived at, therefore, the order of the Court below is required to be set aside.
5. Perusal of the order would show that a complaint under Section 138 of the Negotiable Instruments Act is pending since 2010. According to the averments of the complainant a cheque of Rs.80,000/- dated 17.03.2010 was dishonoured for insufficiency of the funds in the account. The signature in the cheque has not been disputed. Copy of the application filed under Section 45 of the Indian Evidence Act is also not placed on record. Since the signature has not been disputed and the signature in the cheques are admitted inserting the name, amount and date therein cannot fall within the definition of material alteration as per Section 87 of the Negotiable Instrument Act. It can be stated that it is only addition of amount, name and date. This proposition cannot be laid down that the drawer of the cheque himself has to fulfill the amount, name and date in the cheque itself. There can be cases that the beneficiary for some reason or other may ask to fulfill the amount and name in the cheque to others. Unless the fulfilling of cheque is attached by any tampering the same cannot be stated that fraud was committed. Even if it is held that the payee name and amount has not been in the hand-writing of the same person i.e. drawer, it cannot be rendered the cheque as invalid. What is material is the signature and Section 139 of Negotiable Instrument Act draws the presumption in favour of the holder which mandates that it shall be presumed that the holder of the

cheque has received the same in discharge of the date or liability unless the contrary is proved. It is always open for the accused to prove before the Court that no liability exists so as to come out the rigor of Section 138 of the Negotiable Instrument Act. Furthermore, the complaint under Section 138 of the Negotiable Instrument Act are to be tried as summary case, therefore, unless the peculiar circumstances are pointed out, the scope cannot be enlarged to the extent to call for the expert under Section 45 of the Indian Evidence Act.

6. In view of the above, the order dated 20.02.2017 passed by the Additional Sessions Judge, Raipur do not call for any interference. The petition has no merits, it is accordingly dismissed.

Sd/-

Goutam Bhaduri

Judge

Ashu