

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 883 of 2017**

- Ashish Mishra S/o Late S.N. Mishra, Aged About 49 Years R/o House No. 481, Ward No. 41, Behind Lucky Bhart Garage, Yadav Gali, Chuchuhiyapara, Shankar Nagar, Police Station Tarbahar, Bilaspur, District Bilaspur, Chhattisgarh.

**---- Petitioner****Versus**

- Pradeep Agrawal S/o Late Satya Narayan Agrawal, Aged About 45 Years R/o Flat No. 304, 3rd Floor, Mahima Vihar, Bilaspur, Police Station Tarbahar, District Bilaspur, Chhattisgarh.

**---- Respondent**


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For Petitioner : Shri N.K. Chatterjee, Advocate.

For Respondent : Shri Sudhir Kumar Bajpai, Advocate.

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant****Order On Board****14/11/2017**

Heard.

- This petition has been brought under Section 482 of Cr.P.C. with a prayer to quash the impugned order dated 4.8.2016 passed by the Sessions Judge, Bilaspur in Criminal Revision No.06/2016, by which the order passed by the Chief Judicial Magistrate, Bilaspur dismissing the complaint case was upheld.
- A complaint was filed by the petitioner against the respondent that respondent by inducing the petitioner that he will give big returns for the amount given to him, the petitioner, on various dates, has paid a total sum of Rs.13 lakhs to the respondent, who in turn gave the cheques dated 8.9.2016 amounting to Rs.2 lakhs, dated 30.9.2012 amounting to Rs.8 lakhs and dated 5.2.2013 amounting to Rs.3 lakhs to the petitioner

for security purposes. When the respondent did not repay any of the amounts taken by him, then petitioner inquired from HDFC bank about the account of the respondent and he was informed that on the dates mentioned on the cheques the account of the respondent did not have sufficient amount to make payment. Thereafter, a complaint was made to the police but no action was taken, hence, the complaint was filed before the Court praying to take cognizance for trial of offence under Sections 406 and 420 of IPC against the respondent.

3. The Court of CJM, Bilaspur vide order dated 11.12.2015 has held that respondent has taken loan from the petitioner on account of their friendship, hence, for this reason, no offence is made out and the complaint was dismissed. This order was challenged in criminal revision before the Sessions Court which has also been dismissed by the impugned order. Hence, this petition.
4. Learned counsel for the petitioner submits that the orders passed by the Courts below are illegal, improper and arbitrary. Looking to the fact that the dates on which respondent issued cheques in favour of the petitioner, he did not have sufficient amount in his account to honour the said cheques, this shows that the respondent did not have any *bonafide* intention at the time of issuing those cheques and he also convinced the petitioner not to present the cheque for payment and thereafter respondent has never paid any amount to the petitioner, hence, it is clearly a case of criminal breach of trust punishable under Section 406 and cheating punishable under Section 420 of IPC, because from the very first day the intention of the respondent was to grab the amount received by him from the petitioner. It is also submitted that the trial Court has not given any consideration to the statement of the witnesses recorded by the complainant, hence, prayed that the petition be allowed

and the impugned order and the order of the trial Court be set aside with a direction to proceed with the complaint case as per law.

5. The counsel for respondent opposes the submissions made and the grounds in the petition, it is submitted that the trial Court and the revisional Court have rightly passed the orders. The order passed clearly demonstrates that the dispute between the petitioner and the respondent is of civil nature. Even if it is admitted that respondent has issued the said cheques on the dates mentioned, petitioner never presented the cheques for payment in the bank within the period during which the cheques could have been validly presented for payment. Making an inquiry from the said bank about the deposits in the account of the respondents shows malafides on the part of the petitioner. It is submitted that the cheques were given purely for the purpose of security and the amount that has been received from the petitioner, has been returned by the respondent, thus no case is made out for criminal prosecution of the respondent. Hence, it is prayed that the petition be dismissed.
6. Heard both the parties and perused the documents on record.
7. Considering the submissions and the contents of documents brought on record, as submitted, the petitioner and respondent had friendly relation between them on account of which on asking of respondent, petitioner had provided him Rs.13 lakhs. It appears that the cheques issued by respondent had been only for the purpose of security as petitioner himself never presented these cheques for payment in the bank. Other documents on record also reveal, that there had been a civil contract between the petitioner and the respondent under which an amount of Rs.13 lakhs was advanced to respondent by way of loan which was to be repaid by the respondent within the time stipulated. It was only on the failure of the respondent to repay the loan taken by him, petitioner has

brought this complaint. This appears to be clearly a case of breach of agreement and the criminality cannot be attributed to the respondent, only on the basis of statement made by the petitioner that respondent induced him to provide him loan amount on the pretext of attractive returns.

8. Section 203 of CrPC clearly provides that if Magistrate is of opinion, after considering the statement of witnesses of the complainant and the material on record, that there is no sufficient ground for proceeding further, in that case the complaint shall be dismissed. Hence, the criteria herein for taking cognizance in a compliant case is clearly laid i.e. on the basis of the statements made by the petitioner in complaint. In the present case from perusal of the record, it is clear that there is no sufficient ground for proceeding further with the complaint case filed by the petitioner. Hence, for this reason and the discussions made above I am of the opinion that present is not a fit case for exercise of inherent jurisdiction under Section 482 of the CrPC.
9. Accordingly, this petition is dismissed at the motion stage itself.

Sd/-

**(Rajendra Chandra Singh Samant)**  
JUDGE