HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1191 of 2015

- Digvijay Singh Thakur S/o G.S. Thakur Aged About 48 Years R/o Idgahbhata, Gali No. 1, Mangal Bazar, P.S. Aazad Chowk, Raipur, Distt. Raipur, Chhattisgarh.

---- Petitioner

Versus

1. Dinesh Kumar Wadhwani S/o Lalchand Wadhwani Aged About 28 Years R/o Behind Kisaram Gurudwara, Near Kunwa, Lakhe Nagar, P.S. Azad Chowk, Raipur, Distt. Raipur, Chhattisgarh.
2. State Of Chhattisgarh Through District Magistrate, Raipur, Distt. Raipur, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Shrawan Agrawal, Advocate.
For Respondent No.1	:	Shri Anil Kumar Pandey, Advocate.
For State/Respondent No.2		Shri Luv Sharma, PL.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

04/07/2017

1. Heard
2. **Admit**
3. With the consent of counsel for the parties, the case is heard finally.
4. The petition under Section 482 of Cr.P.C. has been brought challenging the impugned order passed by 4th Additional Sessions Judge, Raipur, District-Raipur in Criminal Revision No.126/2014 dated 24.02.2015 whereby the order of the trial Court taking cognizance against respondent No.1 for trial of offence under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act'), was set aside.
5. Petitioner filed a complaint against respondent No.1 on the ground that a cheque No.070115 for Rs.30,000/- dated 02.08.2013 of State Bank of India, Sundarnagar Raipur was issued by respondent No.1 for payment of some dues in favour of the petitioner. The cheque was presented for encashment on 11.11.2013 in the Bank, where petitioner had account. The cheque was dishonored with this comment that account of respondent No.1 did not have sufficient funds for disbursement of the cheque. On the basis of which, a

complaint was filed with prayer to prosecute respondent No.1 for offence under the Act.

6. Trial Court by order dated 10.03.2014 took cognizance in the complaint and ordered for appearance of the accused respondent No.1. This order was challenged before the Court of 4th Additional Sessions Judge, Raipur, which has been decided by the impugned order in favour of respondent No.1, as mentioned herein above.

7. The grounds in this petition are these, that the cheque was dishonored because of insufficiency of fund, this is the only reason mentioned in the information given by the Bank. Hence, for these reasons, the order passed by the Court below is not sustainable. Prayer has been made to restore the order of the Trial Court.

8. It is submitted by counsel for the petitioner that the memo issued by the Bank in which the account of respondent No.1 being operated mentions the only reason that the cheque was dishonored due to insufficiency of fund. It does not mention of the cheque being presented beyond the period of validity. The proviso to the 138 of Act also mentions that cheque can be presented in the Bank within a period of six months from the date on which it is drawn and in this case the cheque was presented within six months from the date it was drawn i.e. 02.08.2013, hence, for these reasons, prayer has been made to set aside the impugned order.

9. Learned counsel for respondent No.1 submits that the cheque dated 02.08.2013 issued by respondent No.1 clearly mentions that its validity is only for a period of three months from the date it was drawn. Specific note being appended on the cheque itself, hence, the presentation of cheque on 11.11.2013, was very clearly beyond the period of validity. Proviso in the Act very clearly mentions that the cheque be presented either within a period of six months from the date it is drawn or within the period of its validity whichever is earlier. Looking to this provision, the petitioner was bound for presenting the cheque within a period of validity i.e. before the expiry of three months on 02.11.2013. Hence, the reason mentioned in the impugned order for setting aside the order of the trial Court is lawful and there is no scope for interference.

   It is further argued by the counsel for the petitioner that Section 146 of the Act provides that the Court has to presum on the basis of bank slip about the fact of dishonour of cheque unless and until such fact is disproved, hence, the bank slip mentions only this fact that cheque has been dishonored due to insufficiency of funds which shall be taken into exclusive ground for dishonour of cheque and no other ground should be entertained.

10. Considering the grounds in this petition, it is found that though it is a fact that bank has returned the cheque with a memo that mentioned the reason of return that fund in the account of respondent No.1, were insufficient, this may be so the question arises whether the statement of Bank can overrule a provision of law which specifically lays down that the cheque has to be presented within the period of its validity. A circular of Reserve Bank dated 04.04.2011 has been presented by counsel for respondent No.1. This circular has been made effective from 1st April, 2012, by which the validity period of the cheque has been reduced from six months to three months. Considering the facts and the provision of law, this Court comes to this conclusion that although the cheque was dishonored due to insufficiency of fund, it could not have been honored otherwise as well because it was presented beyond the period of validity. Hence, for these reasons, this petition cannot succeed in any case.

11. Accordingly, the petition is dismissed at motion stage itself.

Sd/-
(**Rajendra Chandra Singh Samant**)
JUDGE

Nisha