

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1064 of 2017**

Pukeshwar Prasad S/o Visheshar Ram Sen Aged About 40 Years
R/o Village- Newari, Tahsil- Simga, Police Station Suhela,
District- Baloda Bazar- Bhatapara, Chhattisgarh.

---- Petitioner

Versus

Krishna Kumar Sahu S/o Shankar Lal Sahu, Aged About 45
Years Occupation Jail Police, R/o Up Jail, Gariyaband, District
Gariyaband, Chhattisgarh.

---- Respondent

For the Petitioner : Shri Sunil Tripathi, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order on Board****18.08.2017**

Heard on admission.

1. This petition has been brought with prayer to issue specific direction to the Trial Court with respect to the pending proceedings based on the complaint filed by the petitioner
2. Learned counsel for the petitioner submits that a complaint for prosecuting the respondents under Section 138 of Negotiable Instrument Act, 1881 was filed before the Trial Court alongwith affidavit as per the requirements of Section 145 of Negotiable Instrument Act. The Trial Court on receiving the complaint has not taken cognizance and has not registered the case. On the contrary date has been fixed for recording of statements prior to taking cognizance of offences, which is not in accordance with the law.
3. Heard and perused the documents attached with the record.

4. Section 142 of Negotiable Instrument Act, 1881 specifically provides the manner, in which the Court shall take cognizance upon filing a written complaint within limitation. This is specific direction under the provisions that Court shall be empowered to take cognizance of any offence under Section 138 of Negotiable Instrument Act, only on the basis of the filing of complaint in writing alongwith necessary affidavit as provided under Section 145 of Negotiable Instrument Act. Although procedure for trial of complaint cases is applicable in such cases, but clearly the punishment provided under Section 138 of Negotiable Instrument Act, places it in the category of summons cases for which there is no specific procedure, provided under the Code of Criminal Procedure for the requirement of recording of statements before taking cognizance of offence as is specifically provided for the cases for warrant trial. Hence, for these reasons, the proceedings adopted by the Trial Court does not conform to any of the law provided. Hence for these reasons, this petition is allowed at the motion stage without issuance of any notice to the respondent.
5. The Trial Court is directed to consider of taking cognizable offence and registering the case and to proceed in accordance with the law.
6. Petition is stands disposed of.

Sd/-

(Rajendra Chandra Singh Samant)

Judge