

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1153 of 2016**

- Deepak Agrawal S/o Hansraj Agrawal Aged About 45 Years R/o Block-3, Flat No. 43, Indravati Colony, Rajatalab, Raipur Chhattisgarh

---- Petitioner**Versus**

1. Shashikant Pawar S/o Late Shankar Rao Pawar Aged About 33 Years R/o And Co-Owner Of Anant Trading Corporation, Dada Gali, Sadar Bazar, Budhapara, Raipur Chhattisgarh
2. Smt. Vaishali Pawar W/o Shashikant Pawar Aged About 32 Years R/o And Co-Owner Of Anant Trading Corporation, Dada Gali, Sadar Bazar, Budhapara, Raipur Chhattisgarh

---- Respondents

For Petitioner:	Mr. Nimish Kiran Sharma, Advocate
For Respondents:	Mr. Vikram Singh, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****08.02.2017**

1. The present Cr.M.P. has been preferred assailing the order dated 12.08.2016 in Criminal Revision No. 225/2016 whereby the Revision Petition preferred by the present Petitioner has been rejected. Vide the impugned order the Revisional Court has affirmed the order passed by the Judicial Magistrate First Class dated 01.07.2016 in unregistered Criminal Case which was filed seeking for registration of an offence against the Respondents under Section 405 of the IPC.
2. The fact in brief is that the present Petitioner is said to have given 2 Kg of gold in the form of metal to the Respondents on 08.07.2013 as is reflected from Annexure A/3 of the Petition. It was agreed between

the parties that the Respondents herein should pay 1% interest on the said value of the metal. Subsequently, it is said that the Respondents herein have converted the metal and sold in the open market and have stopped paying return which the Petitioner was otherwise entitled. Since the dispute arose they voluntarily entered into two agreements one dated 03.12.2013 and other dated 21.11.2014. Vide the said agreement which was mutually accepted between the parties. It was resolved that the Respondents herein shall pay to Petitioner the value of the metal i.e. 58 lakhs within a period of 1 year from 03.12.2013. It was agreed that they shall pay monthly installment of Rs. 2 Lakhs per month to the Petitioner till the total amount of 58 lakh is not paid. However, Subsequently after the few installment the Respondent again defaulted in paying the value as agreed upon on the agreement. Therefore another agreement was entered into between the parties on 21.11.2014 wherein it has been accepted that the Petitioner who by 15.11.2014 having paid 24 lakhs and 20 thousand was to pay the balance amount also within a further period of six months i.e. till 15.05.2015. Later on it is said that the Petitioner have not paid the entire amount of money which was agreed between the parties. On this the present Petitioner is said to have lodged a complaint before the Police Authorities against the Respondent No.1. The Police authorities is said to have refused to entertain. Subsequently the complaint case was filed before the Judicial Magistrate First Class, Raipur for initiating a criminal prosecution against the Respondents for having committed offence under Section 405 of the IPC. The Judicial Magistrate First Class after considering the statement of the complainant and the evidence which was brought

on record at the time of registration of the complaint held that the nature of the dispute between the parties seems to be more of civil in nature. That the act of criminal offence on part of the Respondent is not made out from the transaction and the agreement which have been entered into between the parties made the Magistrate reject the complaint vide its order dated 01.07.2016. Subsequently a Revision Petition was also preferred by the Petitioner before the 6th Additional Sessions Judge, Raipur registered as Criminal Revision No. 225/2016. The Revisional Court also vide the impugned order dated 12.08.2016 upholding the order of the JMFC rejecting the complaint, also rejected the Revision Petition. It is these two orders which are under challenge in the present Revision Petition.

3. According to the Counsel for the Petitioner, the Petitioner in the instant case had approached Court for initiating criminal case against the Respondent for criminal breach of trust which has been committed by them in as much as the Respondents were entrusted with the 2 Kg of gold ornament by the Petitioner. That the Respondents were not supposed to convert the said gold in any other form and was supposed to pay 1% monthly interest of the value of the said property. The fact that Respondents have converted said metal to different form without consent or knowledge of the Petitioner thereby necessary ingredients which is required under Section 405 of the IPC is made out and therefore the Court below should not have rejected the complaint case but should have registered the same and should have proceeded further.
4. He further submits that the fact that the Petitioner had filed a civil suit

for recovery of unpaid amount that by itself cannot be a ground by which the Petitioner would be restrained or barred from trying to prosecute the Respondents for criminal breach of trust. He submits that the civil suit was filed for the recovery of loss which has been sustained by the Petitioner but the Criminal action which was initiated was for the criminal act which the Respondent have done and which falls within the definition of Section 405 of the IPC. The two proceedings therefore are entirely different from each other and there was no embargo of having filed a civil suit the Petitioner cannot prosecute a criminal case. He further relied upon the decision of the Supreme Court in case of **Arun Bhandari v State of Uttar Pradesh and Others**¹.

5. Learned Counsel appearing for the Respondents on the contrary submits that it a case where the Petitioner have tried to get the complaint registered with an intention to get the balance amount recovered. Learned Counsel for the Respondents submits that admittedly there was a deal between the Petitioner and the Respondents for the said commercial transaction. The Petitioner had given 2 Kg of gold in the form of metal as reflected from Annexure A/3. He further submits that the document itself does not disclose that there was any restriction put upon the Respondents from converting the said metal in any other form or in respect of Respondents selling the article in open market. The Petitioner was only entitled for the value of the property. The Respondents have already paid to the Petitioner the entire amount of money as agreed between them. It gets further established from the fact that the civil suit which has been

¹ (2013) 2 SCC 801

filed by the Petitioner was only claiming interest which amounts to Rs. 6.8 lakhs. That the entire amount which was repaid as per the Respondents were in accordance with the agreement which was entered into between the parties on 03.12.2013 and subsequently on 21.11.2014.

6. Learned Counsel for the Respondent further submits that it is purely a civil dispute in nature. In as much as there was a commercial transaction and there were couple of agreements entered into between the parties. In case there is any breach of agreement the Petitioner is at liberty to initiate civil remedy against them seeking recovery of loss which has been sustained.
7. He further submits that since the civil remedy is available to the Petitioner which infact he has also availed in as much as they have filed a civil suit for recovery against the Respondents for an amount of 6.8 lakhs, itself establishes entire case of the Petitioner. Thus prayed for rejection of the present Petition upholding the two orders passed by the Trial Court as well as the Revisional Court.
8. Having considered the rival contention put forth on either side and perusal of the record indisputably there was a transaction entered into the Petitioner and the Respondents in which the Petitoiner had given 2 Kg of Gold to the Respondents. Annexure A/3 is proof of the same which is not disputed by either of the parties. Likewise there was also an agreement to the effect that the after some time there was default on part of the Respondents in paying the payable to the Petitoiner as agreed initially. Other undisputed fact is that the because of the default in repayment of the money by the Respondents to the

Petitioner two agreements were entered into between them one on 03.12.2013 whereby it was agreed that the value of property assessed to be Rs. 58 lakhs shall be paid to the Petitioner in installments which was agreed by the Respondents of Rs. 2 Lakhs per month to the Petitioner till the entire amount is paid. Again there was a default on the said agreement on the part of the Respondents therefore another agreement was further entered into on 21.11.2014 wherein again it was mutually agreed and accepted that the balance amount shall also be paid within a further period of 6 months i.e. by 15.05.2015. The Civil Suit as has been filed by the Petitioner seeking for recovery of an amount Rs. 6.8 lakhs from the Respondents is still pending consideration before the Court below.

9. In view of the aforesaid undisputed and admitted factual matrix of the case it is clear that there was a commercial transaction between the parties and that there was some default on part of the Respondents in payment and they subsequently entered into two agreements for repayment of the money valuing the property. Since there was some money dispute lying for which civil suit has already been filed this Court is of the opinion that the dispute between the parties stands established to be in the nature of civil dispute. That from the agreements which has been entered into between the parties the criminal offence on part of the Respondent is not made out. Neither is it a case where the necessary ingredients as required under Section 405 of the IPC is made out.
10. So far as the judgment which has been referred to by the Petitioner i.e. case of Arun Bhandari (Supra) the relevant facts which has been relied upon by the Petitioner was in respect of the sale of the property

between the two persons and since there was a breach of trust there was an order of registration of the complaint case under Section 420 of the IPC. The facts of the said judgment was infact under different factual matrix when compared with the facts of the present case. In the instant case agreement between the parties so far as the repayment which was made by the Respondents to the Petitioner are not in dispute. Subsequent to the agreements between the parties repayment of the entire or some money is also not in dispute. Thus the facts of the said judgment is distinguishable.

11. The complaint which is now being sought to be registered against the Respondents is with oblique intention of putting undue pressure upon the Respondents for the repayment of the money. It is nothing but an armtwisting tactics being adopted by the petitioner.
12. For the foregoing reasons the orders of the trial Court as well as the Revisional thus do not suffer from any ambiguity, illegality or infirmity in reaching to the said conclusion and hence they do not call for any interference.
13. The Cr.M.P. thus being devoid of merits, stands rejected.

Sd/-
(P. Sam Koshy)
JUDGE