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HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1168 of 2017**

- Subhash Dighaskar S/o Late Balkrishna Dighaskar, Aged About 73 Years Managing Director Of Farm Radhakrishna Association R/o Shiv Hanuma Mandir Tilak Nagar Bilaspur Tahsil & District Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. Smt. G. Nirmala W/o Late G.Raghupati, Aged About 60 Years R/o Chandan Awas, 1/ A Rajkishor Nagar P.S. Sarkanda Tahsil & District Bilaspur, Chhattisgarh
2. State of Chhattisgarh, Through District Magistrate, District Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Dheerendra Pandey, Advocate
For Respondent No.1	:	Shri Arvind Dubey, Advocate
For Respondent-State	:	Shri SRJ Jaiswal, PL for the State.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****03/11/2017**

1. The present petition is against the order dated 17.08.2017, whereby the order dated 17.07.2017, passed by the Chief Judicial Magistrate, Bilaspur, rejecting an application under Section 91 of the Cr.P.C. was affirmed by the revisional Court.
2. It is contended by learned counsel for the petitioner that a complaint under Section 138 of the Negotiable Instrument Act, 1881 (for short 'the Act, 1881') was preferred by the respondent, wherein on the basis of a cheque of the year 2014, it was alleged by the complainant Smt. G.Nirmala that the said amount was withdrawn from account of her late husband, and was invested

with petitioner. Learned counsel further submits that prior to that in the year 2013 a complaint was made to the police, wherein it was alleged that the said cheque was handed over to one of the partner of petitioner, who had misused it and had given to the complainant, therefore, whether the statement of the complainant that the amount was withdrawn from the account of the deceased husband can only be verified after the bank statements of late husband of the complainant are summoned. It is contended that, therefore, certain documents i.e. the account and the other books of the deceased husband of the complainant were sought for which was refused. Consequently, the order passed by the court below is required to be set aside.

3. Learned counsel for the respondent No.1 would submit that the amount was handed over by the widow Smt. G. Nirmala after death of her husband in order to get share in the land as the petitioner was in the business of the construction and development of lands. It is stated that meanwhile the widow required some amount, as such when she approached the petitioner/accused for money, thereafter, a cheque of Rs.10 Lakhs was given. The said cheque when was presented for payment, the same was dishonoured. He submits that though the complaint was filed in the year 2014 and the case is at the stage of final hearing and in order to avoid the same and protract the trial, frivolous application is filed, therefore, the petition deserves to be dismissed at the threshold.
4. Perused the document filed along with the petition. Which would show that the Court has held that the cheque which was given to the complainant was of the year 2014 and the bank account which was sought to be summoned by the petitioner for the year 2011, 2012 & 2013 i.e. of Bank account. The perusal of the record would show that no order-sheet has been filed in

respect of the complaint case. The statement of the witnesses are also not on record, therefore, it is not clear as to whether such defense was taken during the cross-examination of the complainant or not. Even otherwise, the Section 139 of the Act, 1881 draws a presumption that the holder of a cheque received the cheque, of the nature which is referred in Section 138 was for discharge of a liability. It appears that at the fag end of trial in order to protract the same, the application was moved under Section 91 of the Cr.P.C. which was dismissed. In such eventuality, taking into facts of this case, no merit exists in this case to interfere with the same in exercise of powers under Section 482 of the Cr.P.C.

5. Accordingly, the CRMP is dismissed.

Sd/-

Goutam Bhaduri

Judge

Ashu