

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1514 of 2017

- Yashwant Sonkar, Partner, s/o Santosh Lal Sonkar, aged about 35 years, r/o near Shakti Mandir, Pandariya Road, Mungeli, P.S. City Kotwali, Mungeli, Tahsil Mungeli, Distt. Mungeli (Chhattisgarh) --- **Petitioner**

Versus

- Chandrika Engineering Works Bhanpuri Tahsil and District Raipur, Proprietor Chandrika Prasad Dewangan, s/o Late Sukalu Ram Dewangan, R/o Bhanpuri, P.S. Khamtari, Tahsil and District Raipur (Chhattisgarh). --- **Respondent**

For the applicant : Mr. M.L. Soni, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

01.11.2017

1. This instant petition is against the order dated 25.09.2017 passed by the Court of Addl. Sessions Judge, Raipur in Criminal Revision No.343/2017 whereby the revision petition preferred by the petitioner challenging the registration of complaint u/s 138 of the Negotiable Instrument Act, 1881 was dismissed.
2. Learned counsel for the petitioner would submit that the cheque was dishonoured not on account of insufficiency of funds and nothing is on record to find that the funds were not available. He further submits that the enforcement of liability u/s 138 of the N.I. Act can only be invoked if the legal liability exists, therefore, in absence of such averment that whether any legal liability exists or not, the registration of complaint is bad in law, therefore, the same requires to be quashed.
3. Perused the revisional order dated 25.09.2017. A perusal of the said order and the record would show that a complaint

was filed by the respondent Chandrika Engineering Works Bhanpuri u/s 138 of the N.I. Act wherein it was stated that in lieu of the goods received, a Cheque of Rs.3 lakhs was given on 14.11.2016 and the cheque having been presented, it was returned with an endorsement that the signature of the account holder did not tally. The copy of the cheque and the copy of the mandatory notice are also placed on record. The fact that whether such notice was served or not cannot be appreciated at this stage. The same can be fortified after after the evidence is adduced. The fact that whether the legal liability exists or not can be established during examination and cross examination of the complaint. On the statement of the accused against whom the case has been registered u/s 138 of the N.I. Act the presumption u/s 139 of the N.I. Act has to be drawn. Nothing has been placed on record by the petitioner to show that on that date the sufficient funds were available in the account of the petitioner despite that it was returned. All the facts which have been agitated herein can only be gone into during the course of trial. At this stage, the interference would be premature, therefore, I do not find any reason to interfere in the order of the revisional Court to hold it as without jurisdiction or the Court has acted in a manner where the jurisdiction not vested under the law. Therefore, I am not inclined to exercise the power u/s 482 of the Code of Criminal Procedure.

4. The petition is devoid of any merit and it is dismissed at the admission stage.

Sd/-

**GOUTAM BHADURI
JUDGE**