

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.520 of 2013**

- Smt.Jayanti Devi Jain W/o Prakashchand Jain Aged About 38 Years R/o Near Gupta Timber Mart, Gaya Nagar, P.S. Durg, Tahsil And Distt. Durg C.G.

---- Petitioner**Versus**

- Devendra Kumar Sinha S/o P. R. Sinha Permanent Address - E.W.S. 173, Vaishali Nagar, Bhilai, Tahsil And Distt. Durg C.G., Tem. Add. Qrt. No 4, Street 23, Sec.-6, Bhilai Nagar,Durg, Chhattisgarh

---- Respondent

For the Petitioner	: Smt. Fouzia Mirza and Ms. Saumya Sharma, Advocates
For the respondent	: Ms. Sunita Jain, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

12.11.2018.

1. Heard on application for grant of leave to appeal under Section 378(4) of CrPC.
2. This petition has been preferred against judgment dated 21.02.2013 passed by Judicial Magistrate First Class, Durg, (CG) in Case No.1084/2011 wherein the said Court acquitted the respondent for the charges under Section 138 of the Negotiable Instruments Act, 1881.
3. As per the case of the petitioner, the respondent borrowed money to the tune of Rs.1,20,000/- from her on 28.8.2003 and to repay the same a cheque was issued on the same day. The petitioner submitted the cheque to the Bank of Maharashtra, Brach Durg for clearance but the same was dishonoured on account of closure of account of the respondent. Again another cheque was

issued in favour of the petitioner which was also dishonoured on 14.11.2003 for insufficiency of fund.

4. Case of the complainant is that she issued a notice dated 17.11.2003 to the respondent as per provisions of Section 138 of the Negotiable Instruments Act, 1881 and the same was received by him on 18.11.2003, but the amount was not repaid that is why the complaint was filed before the trial Court.

5. After hearing the parties, the trial Court acquitted the respondent as mentioned above.

6. Section 138 of the Act shall apply only when

(a) the cheque has been presented to the bank within a period of six months* from the date of which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

*the period has been reduced from six months to three months vide RBI Notification No.RBI/2011-12/251, DBOD AML BC. No. 47/14.01.001/2011-12 dated 4th November, 2011 (w.e.f. 1-4-2012).

7. If the notice is issued within 30 days of the dishonour of the cheque and no payment is made within 15 days of the receipt of the

notice, then only cause of action would arise as per Section 142 of the said Act.

8. In the present case, notice dated 17.11.2003 was not produced before the trial Court by the petitioner. Again acceptance of the notice/acknowledgment was also not produced before the trial Court. In absence of proof of issuance of notice and acceptance of notice, no cause of action would arise as per Section 142 of the said Act. The trial Court has elaborately discussed the entire issue and came to a conclusion that no cause of action would arise in this case and no conviction can be passed against the respondent. Again the trial Court opined that as per the version of the petitioner, namely Smt. Jayanti Devi Jain (PW-3) she received the amount from the respondent and then returned to his cheque (para 1) . Looking to her statement, the trial Court opined that it is under cloud that whether any amount is due for payment or not. The trial Court has elaborately discussed the entire issue and after reassessing all the evidence this Court has no reason to record a contrary finding. It is not a case where the respondent should be called for full consideration of the petition.

9. Accordingly, the application for leave to appeal is rejected. Consequently, the CrMP stands dismissed. Consequently, all the interim applications stand dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE