

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 215 of 2015**

Saurabh Mishra S/o Shri Kaushal Kishor Aged About 32 Years R/o Itwari Bazar, Dhamtari, Post Office- Dhamtari, Police Station- City Kotwali, Tahsil And District- Dhamtari, Chhattisgarh

---- **Petitioner**

Versus

1. Abhishek Thakur S/o Late Mahendra Thakur Aged About 32 Years R/o Rishaipara, Dhamtari, Post Office- Dhamtari, Police Station- City Kotwali, Tahsil And District- Dhamtari, Chhattisgarh
2. Tushar Mishra S/o Shri Kaushal Kishor Mishra, aged about 29 years, R/o Itwari Bazar, Dhamtari, Post Office-Dhamtari, Police Station-City Kotwali, Tahsil & District-Dhamtari (C.G.)
3. Kaushal Kishor Mishra S/o Ramsewak Mishra, aged about 63 years, R/o-Itwari Bazar, Dhamtari, Post Office-Dhamtari, Police Station-City Kotwali, Tahsil & District-Dhamtari (C.G.)

---- **Respondents**

For petitioner - Shri Shivendu Pandya, Advocate.
For Respondent No.1 – Shri Y.C. Sharma, Advocate.
For Respondents No.2 & 3- Shri R.K. Pali, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order**

05/04/2018

Heard.

1. Instant petition is against the order dated 24/01/2015 passed by the Sessions Judge, Dhamtari whereby the charge framed against the petitioner under section 138 of the Negotiable Instruments Act by the learned Judicial Magistrate was subsequently affirmed in the revision by the revisional court bearing Criminal Revision No.43/2014.
2. Learned counsel for the petitioner would submit that admittedly in this case cheque was not issued by the petitioner in favour of Abhishek Thakur respondent No.1 complainant before the court below, however averment was made in the complaint under section 138 of Negotiable Instruments Act that since amount was paid to settle the civil suit and the

suit is in respect of property pending against the petitioner and the family members before the civil court, Dhamtari therefore petitioner is liable for such dishonour of cheque. It is stated that without any ingredients of section 138 of the Negotiable Instruments Act the petitioner has been inculpated. He submits that vicarious liability in the like nature cannot be extended under section 138 of the Negotiable Instruments Act and charge as was framed against the petitioner, who is not signatory to the cheque, is completely illegal and without any substance.

3. Per contra, learned counsel for respondent No.1 would submit that according to the allegation of complaint under section 138 of the Negotiable Instruments Act cheque was jointly handed over by Saurabh Mishra, Tushar Mishra and Kaushal Kishor Mishra to settle the dispute of civil suit which was pending against the accused. It is submitted that cheque was jointly given by all of the accused as such it cannot be stated that respondents/accused is not any way liable to make payment.

4. Learned counsel for respondents No.2 and 3 would submit that there is no reason exist to array the respondents as party before the court, therefore they may be exonerated.

5. Perused the documents filed alongwith the petition and complaint under Section 138 of the Negotiable Instruments Act. It is stated that in order to arrive at a compromise in civil suit amount was taken by Saurabh Mishra, Tushar Mishra and Kaushal Kishor Mishra and to return the same all the accused have given cheque of Rs.8 lakhs to the complainant. The allegation of complaint purports that same having been presented for clearance, same was dishonoured. The copy of the cheque which is placed on record shows that cheque of Axis Bank shows that it bears signature of only Tushar Mishra and the cheque also reflects the name of Kaushal Mishra to be the another account holder. The cheque do not

show name of Saurabh Mishra who is petitioner herein. Section 138 of the Negotiable Instruments Act purports that where any cheque drawn by any person or account maintained by "him" with bank for payment of any amount..... such person shall be deemed to have committed offence and ...

6. Prima facie cheque in this case have not been issued or signed by Saurabh Mishra the present petitioner. Copy of the cheque also do not show that it was HUF account. In the circumstances, principles of vicarious liability cannot be extended in favour of the complainant under Section 138 of the Negotiable Instruments Act to inculcate the petitioner when admittedly neither account was in his name nor cheque was issued by him. In the result, charge which has been framed against the petitioner under Section 138 of Negotiable Instruments Act appears to have wrongly been framed. Consequently, same is set aside. Accordingly, order dated 24/01/2015 passed by the Sessions Judge, Dhamtari in Criminal Revision No.43/2014 and order dated 28/10/2014 passed by the JMFC, Dhamtari in Criminal Case No.190/2013 are set aside.

7. Accordingly, the petition is allowed. Petitioner is acquitted of the charges under section 138 of the Negotiable Instruments Act.

Sd/-

(Goutam Bhaduri)

JUDGE