

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 148 of 2018**

Sanjay Kateliha S/o Shri Premchanda Kateliha, aged about 38 years R/o Lodhi Para Sarkanda, Police Station Sarkanda, District- Bilaspur (C.G.).

---Applicant

Versus

Sanjaya Khetrapal S/o Late Shri Om Prakash Khetrapal, aged about 44 years R/o near Sipat Chowk Sarkanda, Police Station Sarkanda, Tahsil and District- Bilaspur (C.G.).

---- Respondent

For applicant	:	Mr. M.D. Sharma, Advocate
For Respondent	:	Mr. Upendra Bharat, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

05/09/2018

1. With the consent of both the parties, the matter is heard finally.
2. This revision has been preferred against the order dated 15/11/2017 passed by the 9th Additional Sessions Judge, Bilaspur in Criminal Appeal No. 107/2011, whereby the learned Additional Sessions Judge while considering the appeal allowed the application submitted under Section 386 (b) of the Cr.P.C and remanded the matter back to the trial Court for afresh adjudication.
3. Facts relating to the instant criminal revision are that the applicant instituted a complaint case under Section 138 of the Negotiable Instruments Act, 1881 (henceforth 'the Act') against the respondent. The said complaint was initially registered before the JMFC, Bilaspur

as Complaint Case No. 27/2011.

4. After trial, the trial Court vide judgment dated 04/05/2011 found the respondent to be guilty of having committed an offence under Section 138 of the Act and convicted and sentenced him to undergo SI for 6 months and compensation of Rs. 80,000/-.
5. Against the above judgment, an appeal was preferred by the respondent before the Appellate Court i.e. 9th Additional Sessions Judge, Bilaspur and the matter was registered as Criminal Appeal No. 017/2011. During the pendency of the said appeal, an application under Section 386 (b) of the Cr.P.C was filed by the respondent (Appellant before the Appellate Court) relying upon the judgment of the Apex Court passed in ***Mandvi Cooperatie Bank Limited v. Nimesh B.Thakore, 92010) 3 SCC 83***. The learned Sessions Judge allowed the said application vide impugned order dated 15/11/2017 and remanded the matter to the Trial Court for considering the case afresh in accordance with law.
6. While deciding the said application, it was found by the Appellate Court that the order of the Court below is bad as the Court below permitted the defence to lead evidence by filling affidavit which is contrary to law and is also in violation to the provisions of Section 145 of the Act. According to the Court below, the said procedure adopted by the trial Court is also contravention to the judgment of Hon'ble Supreme Court rendered in the matter of *Mandvi Cooperative Bank Limited (Supra)*, whereby the principle was laid down by the Hon'ble Supreme Court holding that when the legislature clearly used the expression "evidence

of the complaint may be given by him on affidavit”, the Court cannot add word “accused” in it and therefore, the accused cannot be allowed to give evidence on affidavit. Accordingly, the Appellate Court found the procedure of the trial Court in taking evidence of the defence on affidavit to be bad in law and for these reasons, the matter was remanded to the trial Court for its adjudication.

7. With regard to the ground taken on which the Sessions Court found the procedure of JMFC to be bad in law, a plain reading of the judgment rendered by the Supreme Court in the case of *Mandvi Cooperative Bank Limited (Supra)* clearly stipulates that the evidence on affidavit is not permissible for the defence and that under the provisions of Section 145 of the Act, it is only the complainant who is entitled and permitted to give his evidence on affidavit which the Supreme Court ultimately gives only to the complainant alone and that it cannot be considered that accused/applicants are also permissible to lead evidence on affidavit.
8. Thus, in my considered opinion, the finding of the Appellate Court in this regard appears to be legally and logically correct.
9. Therefore, I found no merit in this revision. Accordingly, the revision is dismissed.

Sd/-
(Arvind Singh Chandel)
Judge