

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1134 of 2017

Smt. Mili Sharma W/o Shri Sharad Kumar Sharma, Aged About 40
Years R/o Rama Green City, House No. D 222, Bahatarai, Police
Station Sarkanda, Tahsil & District Bilaspur, Chhattisgarh.,
--- **Petitioner**

Versus

1. Radhe Shri Jewellers Aged About 38 Years Through The Proprietor
Sunil Soni, S/o Shri Nathmal Soni, R/o Dr. Mehta Gali, Near Abha
Jewellers Bilaspur, Tahsil And District Bilaspur, Chhattisgarh.,
Chhattisgarh
2. Sharad Kumar Sharma Aged About 45 Years R/o Rama Green City,
House No. D 222, Bahatarai, Police Station Sarkanda, Tahsil &
District Bilaspur, Chhattisgarh. ---- **Respondents**

For the applicant	:	Mr. Atanu Ghosh, Advocate
For the State	:	Mr. Rohit Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

06.08.2018

1. This is a petition filed u/s 482 of the Code of Criminal
Procedure to quash the proceedings of Complaint Case
No.2397/2016 pending before the JMFC, Bilaspur whereby
the offence u/ss 138 of the Negotiable Instruments Act has
been registered.
2. Learned counsel for the petitioner submits that in a business
transaction took place wherein certain gold ornaments were
purchased by respondent No.2 Sharda Kumar Sharma from
respondent No.1 Radhe Shyam Jewellers. Thereafter, in final
part payment two cheques were issued by Sharad Sharma
who is the husband of the petitioner which were dishonoured
for want of funds. It is stated that thereafter a complaint
was filed u/s 138 of the N.I. Act and the learned court below

has registered the case u/s 138 of the N.I. Act against both the petitioners as also respondent No.2. It is contended that the cheques having been issued only by Sharad Kumar Sharma, no liability can be fastened to the petitioner by virtue of section 138 of the N.I. Act, therefore, the registration of charge against the petitioner is bad in law.

3. Per contra, learned counsel for respondent No.1 submit that the charge sheet was filed u/s 138 of the N.I. Act and section 420 of IPC, therefore, at this stage it cannot be adjudicated whether the charge u/s 420 is made out or not as there is caucus which exists between the parties, therefore, the petition is premature and liable to be dismissed.
4. Perused the documents. The two cheques are also part of the record. The first cheque was issued on 19.12.2013 for Rs.1,47,800/- and the second one is dated 19.12.2013 for Rs.2 lakhs. The cheques were issued in favour of Radhe Shyam Jewelers. Apparently the said cheques appear to have been signed by Sharad Sharma not by the petitioner. The complaint purports that Sharad Sharma and Mili Sharma were made party and when the cheques were bounced, the complaint was filed and thereafter the trial Court by order dated 15.3.2016 has registered the case u/s 138 of the N.I. Act against the accused which included the petitioner also. Apparently it appears that both the cheques were not signed by the present petitioner. This Court in ***Mohd. Sami Ansari v. State of Chhattisgarh 2011 (4) CGLJ598*** has held that the phrase of words "such person" mentioned in section 138 of the N.I. Act means and refer to the person who has actually drawn the cheque on an account maintained by him

for payment of any amount of money to another person. Therefore, the intention of the legislature was to convict a person who has issued the cheque in discharge of the dues.

5. Apparently in this case, the cheques were issued by the husband of the petitioner and the cheques on bare reading also confirms the same.
6. Since there was no challenge to the order dated 15.03.2016 whereby the offence was directed to be registered only in respect of the offence u/s 138 of N.I. Act, the petitioner who has not signed and issued the cheques cannot be inculpated for the dishonour of the said cheques issued by respondent No.2, the husband, Sharad Kumar Sharma.
7. In the result, the proceedings against the petitioner Mili Sharma wife of Sharad Kumar Sharma u/s 138 of N.I. Act in complaint case No.2397/2016 pending before the JMFC, Bilaspur, Chhattisgarh is hereby quashed. Accordingly, the petition is allowed.

Sd/-
GOUTAM BHADURI
JUDGE