

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 459 of 2018**

- Smt. Satvinder Kour Chawala W/o Navneet Singh Chawala Aged About 28 Years R/o Ful Chowk, Infront Of Naveen Market, Adarsha Kiraya Bhandar, P. S. Gol Bazar, Tahsil And District Raipur Chhattisgarh

---- Petitioner

Versus

- Shyam Sundar Verma S/o Late Ramchandra Verma Aged About 45 Years R/o Shivanand Nagar, Sector -3, Gondwara Main Road, P. S. Khamtarai, Tahsil And District Raipur Chhattisgarh

---- Respondent

For Petitioner : Shri Praveen Dhurandhar, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****07/03/2018**

1. Heard.
2. Learned counsel for the petitioner would submit that the proceeding under Section 138 Negotiable Instruments Act (for short 'the N.I. Act') was registered by the Court below without satisfaction of the fact that the legal liability to make payment to the complainant never existed and it is a pre-requirement for registration of the offence under the N.I. Act. He would make a reference to the agreement (Annexure P-4) and would submit that a sale agreement was entered on the condition that certain lands, if they eventually fall free from the civil dispute, then the sale deed would be executed and the cheques were given for such purchase and thereby they were held for security. He would further refer to the case of ***Indus Airways Private Limited and others Vs. Magnum Aviation Private Limited and***

Another {(2014) 12 SCC 539}.

3. Perusal of the complaint would show that the complaint has been filed for dishonour of the cheque dated 06.07.2017 of Rs.25 Lakhs. The enforceable date was not existing cannot be inferred by reading of the complaint. Admittedly, agreement which has been referred by the petitioner is not before the Court, therefore, before registration of the offence under Section 138 of the N.I. Act, the Court is not expected to presume the defense which would be raised by the accused unless & until accused comes before the Court and explains those facts. The petitioner would be always at liberty to prove his innocence before the Court and raise his defense.
4. The petition appears to be premature. It is accordingly dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu