

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 988 of 2018**

Pramod Kumar Dhariwal S/o Late Motilal Ji Dhadiwal Aged
About 55 Years R/o- M/s M.M. Sarees, Cloth Market, Pandri,
P.S. Mowa Pandri, Raipur, Tehsil & District- Raipur,
Chhattisgarh. --- **Petitioner**

Versus

Dr. Kuldeep Solanki S/o Shri Dineshchandra Solanki R/o-
Gastro @ Endo Centre, Infront Of Ratan Palace, Ahead Of
Dena Bank, Katora Talab, Raipur, Tehsil & District- Raipur,
Chhattisgarh. --- **Respondent**

For the applicant : Mr. Ankur Agrawal, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

17.05.2018

1. The instant petition is against the order dated 20.04.2018 passed by the JMFC, Raipur in Criminal Complaint Case No. 1050/2018 whereby the application filed under section 91 of the Code of Criminal Procedure filed on behalf of the petitioner/ accused was dismissed and the said order of JMFC was affirmed by the learned Addl. Session Judge (Special Judge), Raipur by order dated 10.05.2018 passed in Criminal Revision No.166/2018.
2. Brief facts of the case are that a complaint was filed u/s 138 of the Negotiable Instruments Act against the petitioner wherein it was stated that an advance amount of Rs.20 lakhs given to the petitioner for sale consideration. Subsequently,

the complainant having come to know that the petitioner is not the owner of the land asked the petitioner to return the advance paid and the petitioner has issued cheques in favour of the complainant. It is alleged that when the said cheques were presented for encashment, they were dishonoured for want of funds.

3. Learned counsel for the petitioner submits that by mere oral saying that the advance of Rs.20 lakhs has been made, it cannot be accepted as a gospel truth and it has to be supported by necessary documents i.e., statement of bank accounts and returns of Income Tax. He would therefore submit that in order to call the documents, an application u/s 91 of Cr.P.C., was filed on behalf of the petitioner which was dismissed. He placed reliance on a decision of the Supreme Court in case of *John K. Abraham Vs. Simon C. Abraham (2014) 2 SCC 236* and another decision reported in *2017 Law Suit (MP) 2207 1095 (Law Suit) – Shivendra Dhakre Vs. Narendra Sharma* decided on 09.08.2017 in M.Cr.C.No.8274/ 2017 and would submit that the source of earning has to be established to draw a presumption u/s 139 of the N.I. Act.
4. A perusal of the complaint under section 138 of N.I. Act would show that the accused has shown the land at VIP Road and thereafter an amount of Rs.20,00,000/- was paid by the complainant to the respondent (petitioner herein). Thereafter, after coming to know the fact that the petitioner is not the owner of the land, the complainant insisted to refund the advance amount paid to him and when the cheques issued by the petitioner in favour of the complainant

they were dishonoured for want of funds and thereafter, the complaint was filed against the petitioner. Subsequently an application was filed by the petitioner/accused u/s 91 of Cr.P.C., wherein the statements of bank accounts and the Income Tax returns were called for. In reply to such application u/s 91 of Cr.P.C., 3 documents were placed by the complainant showing the payment of transaction.

5. As has been laid down in case of John Abraham (2014) 2 SCC 236 (*supra*), in order to draw a presumption the burden lies on the complainant to show that he had the requisite funds for having advanced the money to the accused and that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant. The aforesaid proposition is not in conflict with the facts of this case. In the instant case, a categorical submission has been made by the complainant that he has advanced the amount of Rs.20 lakhs for sale consideration and when the application u/s 91 was filed, in reply, statements of accounts were filed showing the transaction that of complainant. In order to call for any document, first the existence of the such document with the opposite party has to be established. There cannot be a roving enquiry and presumption of existence of any document and mechanical order for production has to be passed. The complainant is still to be cross examined before the Court. Therefore, in the circumstances, only on presumption, the court cannot order that any such documents exists to show the source of income.

6. Since the complainant came out with statements of accounts showing the transaction pursuant to the application filed by the accused/petitioner u/s 91 of Cr.P.C, It is for the complainant to prove his case before the Court and the fact whether the complainant was not having sufficient funds either in his books of accounts or in I.T. Returns can be eliminated during the cross examination which facts cannot be presupposed at the behest of the accused that the complainant did not have any fund to advance.
7. In view of the above discussion, the dismissal of application u/s 91 Cr.P.C., do not find any illegality or perversity warranting interference by this Court in the petition. Accordingly, the petition has no merit and is dismissed.

Sd/-

**GOUTAM BHADURI
JUDGE**