

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1836 of 2017

1. Hemant Kumar Sahu S/o Ramlal Sahu Aged About 42 Years
R/o Block No. 36 A, C Pocket, Maroda Sector, Bhilai, Distt.
Durg, Chhattisgarh .
2. Kalpana Sahu W/o Hemant Kumar Sahu Aged About 38 Years
R/o Block No. 36 A, C Pocket, Maroda Sector, Bhilai, District :
Durg, Chhattisgarh
--- **Petitioners**

Versus

Anita Varu W/o Hemant Kumar Sahu, Aged About 40 Years R/o
Block No. 104 Arisali Sector, Bhiali, Tahsil & Distt. Durg
Chhattisgarh.
--- **Respondent**

For Petitioners	:	Mrs. Fouzia Mirza, Advocate
For the respondent	:	Mr. Punit Ruparel, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

22.06.2018

1. This petition is against the order dated 22nd November 2017 passed by the 1st Addl. Sessions Judge, Durg, passed in Criminal Revision No. 223/2017 whereby the order dated 04.10.2017 passed by the learned JMFC, Durg in Criminal Case No.3920/2014 closing the right to lead evidence of the petitioners was affirmed.
2. Learned counsel for the petitioner would submit that the order emerges out of a proceeding u/s 138 of the Negotiable Instruments Act. It is contended that both the petitioners were examined before the court below and in order to prove the fact that the amount obtained has already been paid back to the complainant/respondent and the entry thereof was

recorded in their pass-book and enumerating the ground even the application moved u/s 91 of Cr.P.C., was allowed and in the background of the case the Court has directed to summon the Branch Manager along-with the relevant documents i.e., account book to produce before the court in order to decide the actual lis between the parties. It is contended that despite the payment of P.F., if the Branch Manager do not turn up, the petitioners/accused cannot be allowed to suffer irreparable loss for the act of the Court. It is therefore contended that considering the nature of the case, one more opportunity may be granted.

3. Per contra, learned counsel for the respondent opposes the same.
4. Perused the documents. A perusal of the order of the court below would show that when the case was fixed for defence evidence on 04.07.2017, an application was filed u/s 91 of Cr.P.C., to summon the document and to call the Branch Manager of the State Bank of India, Civic Center, Bhilai alongwith with details of account No.10236613142 and account No.30690545794 in respect of the transactions in between 19.06.2011 and 20.07.2011. It is on record that the JMFC prima facie considering the submission of the petitioners/ accused wherein they stated that they have repaid the amount of Rs.2 lakhs to the complainant and the loan was obtained on 19.06.2011 and the payment was made on 20.07.2011 allowed the application u/s 91 of Cr.P.C., for production of account book of the relevant period. The order

sheets further record that thereafter on 22.09.2017 the Court has directed to procure the attendance of the witness i.e., Branch Manager of S.B.I., and to examine him on 04.10.2017. On 04.10.2017 the right of the petitioners to lead evidence was closed on the ground that it was the duty of accused to produce the witness before the Court.

5. A perusal of the record would show that the summons were issued to the Branch Manager, Civic Center, Bhilai to come with relevant documents and give the evidence thereby the accused/petitioners were allowed to procure the attendance of the witnesses with the intervention of the Court. Therefore, if the summons were paid to call the witness as evidence and the report of it was awaited, then it cannot be accepted that the defendants with their effort would be able to procure the attendance of witness who is a Branch Manager of a Bank and not a private individual.
6. When the summons were issued to procure attendance with the intervention of the Court, it was the duty of the Court to procure attendance of the witnesses before the Court. The order whereby the application under section 91 of Cr.P.C., was allowed and in continuity the witness was allowed to be summoned with the document, has not been challenged. Therefore, under the circumstances, the order dated 22.11.2017 and the consequent order dated dated 04.10.2017 whereby the right to lead evidence of the petitioners was closed are set aside. It is directed that on further payment of process fee, the Court shall be obliged to

summon the concerned Branch Manager along-with the documents so that his attendance can be procured through the intervention of the Court.

7. In the result the petition is allowed. The records of the court below shall be sent back forth with. The parties shall appear before the Court below on 16th July, 2018. The trial Court shall decide the case within a further period of 45 days from the date of receipt of certified copy of the order.

**Sd/-
(GOUTAM BHADURI)
JUDGE**