

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 212 of 2007

Raghu son of Shri Raghwan, aged about 45 years, Resident of Bhanupratappur, District Kanker (CG)

---- Applicant

Versus

1. Vithal Das Patel, son of Shri Nanji Bhai Patel, aged about 40 years, Resident of G.E. Road, Rajnandgaon, Tehsil and District Rajnandgaon (CG)
2. The District Magistrate Rajnandgaon, District Rajnandgaon (CG)
(wrongly made party in the lower Appellate Court and therefore, it has been arrayed as respondent)

---- Respondent

For Applicant	:	Mr. Amit Kumar Sahu
For Respondent	:	Mr. Aditya Bhardwaj

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

03/05/2019

The facts involving in this revision are that on 18.04.1997 the accused/applicant had borrowed Rs.50,000/- from the complainant to run his business and it was promised by him that he would return the said amount within a period of 4 months therefrom with 2 % interest. However, when the accused/applicant failed to keep his promise, the complainant (PW-1) raised the demand for refund of the amount on which the accused/applicant gave a Cheque No.0/A-73/100, 064720 dated 14.08.1997, which on presentation in the State Bank of India, Branch Bhanupratappur was returned on 22.12.1997 with a note that the accused/applicant had already closed his account in the said Bank on 21.08.1997 i.e. about a week after issuing the cheque. Subsequently, on 12.01.1998 the complainant gave a registered notice to the accused/applicant asking him to repay the amount so borrowed which was duly received by him on 14.01.1998 but even a fortnight thereafter the

accused/applicant did not do the needful which prompted the complainant to file complaint against him.

2. Learned trial Court by judgment dated 25.06.2005 found the accused/applicant guilty under Section 138 of the Negotiable Instruments Act and sentenced him to undergo RI for one year with fine of Rs.5,000/- plus default stipulation. In appeal also the findings recorded by the trial Court remained unjustified vide impugned judgment dated 03.05.2007.

3. Heard counsel for the parties and considered the material on record including the evidence of the witnesses.

4. From the evidence of PW-4 – the clerk posted in the State Bank of India, Branch Bhanupratppur it is revealed that when the complainant (PW-1) presented the cheque particularized above on 22.12.1997, the accused/applicant was not operating the account on the said branch as it was closed by him on 21.08.1997. This shows that while issuing the cheque on 14.08.1997 the applicant was intending to close his account which he did just about a week thereafter. Further, the evidence of PW-2 and PW -3 also discloses that the amount of Rs.50,000/- was given by the complainant to accused/applicant on demand to carry forward his business and while the transaction was made, the accused/applicant had promised to return the same within a period of 4 months with 2 % interest thereon and sometime thereafter the complainant (PW-1) had apprised them that the amount was not refunded by the accused/applicant and he was planning legal recourse against him. Though in 313 Cr.P.C. statement the accused/applicant denied the receipt of registered notice yet the document of Ex.P-6 clearly shows that the registered notice was received by him on 14.01.1998 and he has nowhere been specific denying the signature appeared on Ex.P-6. Most importantly, the closure of his bank account just a week after issuing the cheque shows that right from the beginning he was not inclined to return the amount borrowed by him from

the PW-1 and that is why he had issued the cheque to temporarily hush-up the complainant.

5. The aforesaid factual discussion read in the light of evidence of the witnesses unflinchingly goes to show that after issuing the cheque he had closed the account which led to dishonour of the cheque on presentation by PW-1 and being so the findings recorded by both the Courts below holding him under Section 138 of the Negotiable Instruments Act and imposing the sentence described above do not suffer from any legal flaw warranting interference in this revision.

6. Revision thus being without any substance is liable to be dismissed and it is dismissed as such.

**Sd/-
(Vimla Singh Kapoor)**

Judge