

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 429 of 2009**

- Smt. Kantikiran, W/o Indra Kumar Chandrakar, aged about 44 years, residence of Pulgaon Naka Durg Tahsil and District – Durg (C.G.)

----Petitioner**Versus**

1. State of Chhattisgarh, through the District Magistrate, Raipur, District Raipur (C.G.)
2. R.R. Forwarding Company, partner Ravindra Agrawal, R/o Radhe Complex, Rathore Chowk, Thana – Ganj, District Raipur (C.G.)

---- Respondents

For Petitioner	:	Smt. Indira Tripathi, Adv.
For Respondent No.1	:	Shri Anant Bajpayee, P.L.
For Respondent No.2	:	None

Hon'ble Smt. Justice Rajani Dubey**Order on Board****26/07/2019**

01. Present revision is directed against the impugned order dated 31.08.2009 passed in Criminal Appeal No.42/2009 by learned 10th Additional Sessions Judge (F.T.C.) Raipur, affirming the order dated 05.02.2009 passed in Criminal Complaint Case No.1610/2006 by the learned Chief Judicial Magistrate First Class.

02. Brief facts of the case are that the petitioner had purchased one Tractor Model 45 from the complainant/respondent No.2 amounting to Rs.2,07,860/- and

a cheque of the same amount was issued in favour of respondent No.2 on 31.12.2005. The said cheque was produced by the complainant/respondent No.2 before Allahabad Bank Telibandha, Raipur, but the same was dishonoured on account of insufficient fund. Thereafter, the complainant/respondent No.2 sent a legal notice to the petitioner demanding outstanding amount and filed complaint case under Section 138 of the Negotiable Instrument Act (for short 'the Act') before the Judicial Magistrate First Class.

03. The learned trial Court, after hearing both the parties, convicted the petitioner under Section 138 of the Act and sentenced him to undergo R.I. for one year with fine of Rs.10,000/-. This order was appealed by the petitioner but the learned Appellate Court has confirmed the order of learned Judicial Magistrate First Class. Hence, this revision.

04. Learned counsel for the petitioner submits that the impugned judgment of conviction and order of sentence being contrary to the law and material available on record, is liable to be set aside. He further submits that the Courts below have failed to consider the evidence available on record and also failed to consider the fact that the amount for which the said cheque has been issued, was already paid to the complainant by way of demand draft. The learned Courts below in-spite of documentary evidence relating to payment of amount in question by demand draft has wrongly presumed that the

complainant failed to prove the aforesaid demand draft of Rs.2,10,000/-, payment of tractor in question against which the aforesaid impugned cheque was issued, so the finding of the learned Courts below is perverse and contrary to rule of prudence. He also submits that the evidence of complainant is not at all trustworthy as he has not proved that the demand draft of Rs.2,10,000/- which was received by the complainant/respondent No.2, was for another tractor purchased by the petitioner.

05. Learned counsel for the State supporting the impugned judgment submits that the both the Courts below have not committed any error in passing the impugned judgment.

06. I have heard learned counsel for the parties and perused the material on record.

07. Before the trial Court, the defence of the accused/petitioner was that she had paid the amount of cheque in question on 16.02.2006 by way of Demand Draft No.355044-000018000 of Rs.2,10,000/-. Ravindra Agrawal (CW/3) himself, in para 6 of his cross-examination, has stated that he received the amount of check but that was not related to the cheque in question, rather it was for another tractor. He has also stated that the accused/petitioner has not sent the Demand Draft in question in relation to cheque and she might have sent the demand draft in relation to another tractor. To the notice of the complainant, the petitioner sent a reply dated 21.08.2006 (Ex.P/5) wherein, in para3, it has been

stated that she has made the payment against the cheque in question of Rs.2,07,860/- on 16.02.2006 by way of Demand Draft No.355044-000018000 of Rs.2,10,000/- of Dena Bank, Mohan Nagar, Durg and assurance was given by the complainant/respondent No.2 herein to return the cheque in question, but he did not do so giving excuses. The complainant company did not deny this fact and filed a complaint case against the petitioner. Complainant Ravindra Agrawa (CW/1) himself has stated that the demand draft was for another tractor but the complainant company failed to adduce any documentary evidence, in particular bill amount and transaction thereto. Further, in para 10 of his cross-examination, he admits that he has not brought the demand draft given by the accused/petitioner. Further, in para 13, he also admits that the demand drafts so sent by the accused/petitioner have been deposited in R.R. forwarding, but the learned trial Magistrate, in para 13 of the impugned judgment, recorded the finding that the accused/petitioner has not been able to prove as to why she sent two demand drafts of Rs.2,10,000/- and Rs.1,00,000/- on 16.02.2006 against the amount of Rs.2,07,860/-. Mere saying that the demand draft was not related to the cheque in question and it was related to another tractor's transaction does not constitute an offence unless it is proved by adducing any documentary evidence.

08. In cases related to Negotiable Instrument Act, definitely

the onus lies on the accused who signed the cheque to prove his/her case, but in the present case, it is clear from the evidence that the complainant has deliberately concealed the material fact that after issuing the legal notice, he had received a sum of Rs.2,10,000/- by demand draft sent by the accused/petitioner against the cheque in question. In the instant case, whole burden shifted to complainant company and it has to prove this fact that amount of demand draft was for another transaction by leading cogent and reliable evidence, much less documentary evidence, which he failed to prove it. Both the Courts below, while passing the impugned judgment of conviction and order of sentence, have not considered this aspect of the matter in its true perspective and thereby committed illegality.

09. Thus, in view of the aforesaid discussion, the criminal revision is allowed. The impugned judgment of conviction and order of sentence is set aside and the petitioner is acquitted of the charge levelled against her. The petitioner is on bail, her bail bond shall stand discharge.

Sd/-
(Rajani Dubey)
JUDGE