

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 370 of 2012

Pawan Kumar S/o. Kulkeet Ram Barbhav, Aged about 40 years,
R/o. Bhatgaon, P.S. and Tahsil Bilaigarh, District Raipur (C.G.)
(wrongly mentioned in impugned order as both R/o. Sarsiva,
District Raipur (C.G.)

---- Applicant

Versus

Dhanraj Agrawal, S/o. Chandulal Agrawal, R/o. Sarsiva, P.S.
Sarsiva, District Raipur (C.G.)

---- Respondent

For Applicant : Mr. C.R. Sahu, Advocate.
For Respondent : Mr. Vivek Singhal, Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

27.02.2019

Certificate dated 23.01.2016 issued by Chhattisgarh Government shows that the accused/applicant died on 21.01.2016. Though the accused/applicant died during the pendency of this revision yet in the light of the order passed by the Hon'ble Apex Court in the matter of **Pranab Kumar Mitra vs. State of WB** reported in **AIR 1959 SC 144**, this Court proceeds to decide this case on its merits.

2. Facts of the case, in brief, are that the accused/applicant had issued a cheque No. 0430443 for Rs. 4,00,000/- in lieu of

payment made by him from the complainant towards the construction material purchased by him. When the cheque got bounced, the complainant conveyed the same to the applicant orally but there was no positive response from him. Thereafter, on 11.10.2007 the complainant sent a legal notice through registered post but he failed to reply to the same or make the payment as was due. This made the complainant file a written complaint u/s 138 of the Negotiable Instrument Act against the accused/applicant.

3. Having taken cognizance of the matter learned Magistrate convicted the accused/application under Section 138 of the Negotiable Instrument Act and sentenced him to undergo RI for two years with fine of Rs. 5000/- vide order dated 08.04.2011 which by the judgment impugned dated 31.05.2012 passed in Criminal Appeal No. 44 of 2011 received affirmation. It is the same judgment which is under challenge in this revision petition.

4. Learned counsel for the applicant submits that the order impugned being contrary to the evidence on record is liable to be set aside. Counsel for the respondent, however, supports the same.

5. From perusal of the record, it is apparent that on presentation of the cheque issued by the applicant on 28.08.2007 it got dishonored on 07.09.2007 for want of sufficient fund in the account. Thereafter, the complainant made a oral

request to the applicant to ensure payment and when it did not receive any concrete response from the accused/applicant, he issued a legal notice asking him to make payment but neither he replied to the same nor chose to make the payment. This act of the accused/applicant made the complainant file a written complaint against him under Section 138 of Negotiable Instrument Act. Thus, the applicant herein has failed to discharge his duty of ensuring the cheque issued by him for Rs. 4,00,000/- being honoured so as to make the payment against the material purchased from the shop of the complainant. Even after legal notice issued to him, he turned a deaf ear to the same. Thus both the Courts below have not committed any error in convicting the accused/applicant under Section 138 of the Negotiable Instrument Act and imposing the sentence described above.

6. In aforesaid view of the matter the revision is held to be without any substance and is hereby dismissed as such.

Sd/-

(Vimla Singh Kapoor)

JUDGE

Jyotishi/Santosh