

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 87 of 2019**

Order Reserved on : 04/09/2019

Order Delivered on : 04/12/2019

- Goukaran Prasad Nourange, son of Sukhdev Prasad, aged about 57 years, resident of quarter No.2/C, Street No.8, Sector-4, Bhilai, Police Station - Bhilai Bhatti, District Durg (C.G.)

----Petitioner**Versus**

- Mangaldas Markandey, son of late Kaluram, aged about 50 years, resident of 34/G, Sector-2, Street No. 15, Bhilai, Police Station Sector-6, District Durg (C.G.)

---- Respondent

For Petitioner	:	Ms. Richa Dwivedi, Advocate.
For Respondent	:	Shri Jitendra Gupta, Advocate.

Hon'ble Smt. Justice Rajani Dubey**C A V Order****04/12/2019**

01. Present revision is directed against the impugned order dated 07.01.2019 passed in Criminal Appeal No.225/2018 by 4th Additional Sessions Judge, Durg, whereby the learned appellate Court below has confirmed the conviction and order of sentence dated 10.08.2018 passed by learned Judicial Magistrate First Class, Durg, in Complaint Case No.4734/2015.
02. Brief facts of the case are that respondent (complainant)

filed a complaint case before the learned Judicial Magistrate First Class, Durg on the ground that the applicant had borrowed Rs.2,00,000/- from the complainant (respondent) and in lieu of that he had given a cheque No.400505, dated 17.04.2015 of Punjab National Bank, Branch Civic Center, Bhilai, which was dishonoured by the concerned bank on account of insufficient fund. Thereafter, the complainant (respondent) sent a legal notice to the applicant through his counsel for payment of said amount but the applicant did not pay the amount to respondent. The complainant filed an complaint under Section 200 Cr.P.C. and after witness of complainant, the learned Judicial Magistrate First Class, Durg, registered the complaint against the applicant and framed charges under Section 138 of Negotiable Instrument Act (for short 'the N.I. Act'). Before the trial Court, the complainant examined one witness. The statement of the accused/applicant was recorded under Section 313 of Cr.P.C.in which he denied the circumstances appearing against him in the case, pleaded innocence and false implication.

03. The learned trial Court, by the judgment and order dated 10.08.2018, convicted the applicant under Section 138 of the Act and sentenced him till rising of the Court and also ordered to give compensation of Rs.2,42,000/- to complainant within one month, failing which the applicant shall have to undergo S.I. for three months and also to pay Rs.2,42,000/- to complainant. The applicant filed an appeal against his

conviction and sentence but the learned Appellate Court rejected his appeal and affirmed the conviction and sentence passed by the learned trial Court. Hence, this revision.

04. Learned counsel for the applicant submits that both the Courts below have failed to appreciate the evidence available on record and thus erred in passing the impugned judgment of conviction and order of Sentence. She further submits that the applicant regularly paid Rs.6,000/- per month to the respondent/complainant, which the learned trial Court as well as the appellate Court have not taken into consideration while passing the impugned judgment. She also submits that the both the Courts below have also gone wrong in not appreciating the fact that the complainant himself has admitted that the cheque in question was given by the applicant as security. It is next submitted the cheque in question was not sent to hand writing expert. Therefore, the impugned judgment confirming the conviction and order of sentence may be set aside.

05. Learned counsel for respondent supports the impugned order passed by both the Courts below.

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

07. In order to determine the question whether offence punishable under Section 138 of the Act is made out against the applicant, it will be necessary to examine the scope and ambit of presumptions to be raised as envisaged by the

provision of Section 139 of the Act, which read as under:-

139. Presumption in favour of holder. - It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.

08. In the case in hand, the applicant admitted his signature on cheque bearing No.400505 of Rs.2,00,000/- (Ex.P/1-C). The applicant, in his defence, has examined two defence witnesses and the complainant examined himself as CW-1. The applicant, in para 4 of his examination, has admitted that he had borrowed Rs.1,00,000/- and issued a cheque of the same amount. But, later he says that he had issued a blank cheque. The cheque in question (Ex.P/1-C) clearly shows the figure of 2,00,000/- and there is no correction in the amount of cheque, thus, the stand of the applicant that he had given cheque of Rs.1,00,000/- has no force. Though, the Ramesh Kumar (DW/2) has stated that he saw the applicant giving Rs.6,000/- to the complainant (respondent) thrice against the borrowed amount, but the applicant has failed to produce any documentary evidence in that regard. The material on record reflects the fact that the complainant/respondent proved this fact that the applicant gave a cheque in question, which was dishonoured by bank on account of insufficient fund. The trial Court and the appellate Court, after appreciating the oral and documentary evidence, have rightly held the applicant guilty

of the offence under Section 138 of N.I. Act. That apart, it is settled position of law that the scope of interference in exercise of revisional powers of the High Court is quite limited inasmuch as it has to only verify that whether there is any material irregularity and/or illegality coupled with arbitrariness or perverseness in the impugned order or not. In the present case, no such circumstance is there warranting interference by this Court.

09. Accordingly, the criminal revision preferred by the applicant is bereft of any substance and, therefore, the same is liable to be and is hereby dismissed.

Sd/-
(Rajani Dubey)
JUDGE