

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 405 of 2018

Ajay Sahu

Applicant

Versus

Ganesh Shankar Diwan & Another

Respondents

Post for pronouncement of the order on 04.12.2019

Sd/-

JUDGE

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on : 04.09.2019****Order Delivered on : 04/12/2019****CRR No. 405 of 2018**

- Ajay Sahu S/o Kamal Ram Sahu Aged About 29 Years R/o- New Laxmi Nagar, Dawra Colony, Raipur, P.S. Tikrapara, Tahsil And District- Raipur, Chhattigarh.

---- Applicant**Versus**

- Ganesh Shankar Diwan (Dead) Through Legal Heir As Per Honble Court Dated 29/08/2018
1.1 - (A) Amrita Diwan W/o Ganesh Shankar Diwan Aged About 56 Years R/o- Laxmi Nagar, Jhanda Chowk, Raipur, P.S. Tikrapara, Tahsil And District- Raipur, Chhattigarh., District : Raipur, Chhattisgarh
- 1.2 - (B) Tilak Diwan S/o Ganesh Shankar Diwan Aged About 28 Years R/o- Laxmi Nagar, Jhanda Chowk, Raipur, P.S. Tikrapara, Tahsil And District- Raipur, Chhattigarh., District : Raipur, Chhattisgarh
- 1.3 - (C) Vivek Diwan S/o Ganesh Shankar Diwan Aged About 26 Years R/o- Laxmi Nagar, Jhanda Chowk, Raipur, P.S. Tikrapara, Tahsil And District- Raipur, Chhattigarh., District : Raipur, Chhattisgarh
- State Of Chhattisgarh Through- The Collector, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Applicant	: Shri Raj Kumar Pali, Advocate
For Respondent No.1	: Shri Yadunandan Chandra, Advocate
For Respondent No.2/State	: Shri Samir Sharma, Dy.GA

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

Present revision is directed against the impugned judgment of conviction and order of sentence dated 04.04.2018 passed by the Third Additional Sessions Judge, Raipur in Cr.A. No. 157/2017 whereby the learned Appellate Court has affirmed the judgment and conviction passed by the Judicial Magistrate First Class, Raipur in Cr.Case No. 697/2011.

2. Brief facts of the case are that the applicant was engaged in the business of sale and purchase of land. It is the case of prosecution that the respondent No.1 contacted him and entered into an agreement for purchase of a land situated at village Kandul, P.H. No. 118, Tahsil and District Raipur bearing Khasra No. 237/1, measuring 1370 sq. ft. for Rs. 1,09,600/-. The complainant paid the amount in two installments through cheques and as such the agreement of sale was executed and the provisional sale deed was also reduced into writing. The complainant did not get the land registered in his favour due to disinterest shown by his son on the said land. After expiry of four years the complainant has asked the applicant to sell the land to someone else, which was purchased by the applicant himself for Rs.2,19,000/- @ 160/- per square feet and paid Rs. 150/- cash as well as cheque bearing No. 861166 for the said amount and took the original agreement of sale and provisional sale deed back from the complainant. It is the allegation that when the complainant presented the cheque in the bank, the same was dishonoured on account of

insufficient funds. After sending notice to the applicant, complainant filed complaint case before the trial court. The trial court registered complaint case against the applicant under Section 138 of the Negotiable Instrument Act.

3. So as to prove the case of the complainant, he examined two witnesses. Statement of the applicant was also recorded under Section 313 Cr.P.C. in which he pleaded his innocence and false implication in the case. This apart one defence witness has been examined.

4. After hearing the parties, by the impugned judgment dated 16.5.2017, the Judicial Magistrate First Class, Raipur convicted the applicant under Section 138 of the NI Act and sentenced him to pay compensation of Rs. 4,38,000/- with default stipulation. This order was appealed by the applicant and the learned appellate court affirmed the order of Judicial Magistrate First Class. Hence, the present revision.

5. Counsel for the applicant submits that the learned court below has committed error in convicting the applicant and imposing fine of Rs. 4,38,000/-. Both the courts below failed to appreciate and consider the provisions of Section 29 of the Cr.P.C. in its words and spirit and have passed the order of imposition of fine which is not sustainable in the eye of law. He submits that the learned courts below have not considered and appreciated the evidence available on record in its entirety and had arrived at a wrong finding. The findings recorded by the courts below are perverse to the evidence and other material available on record. He submits that the defence witness who is a

handwriting expert, has specifically stated that the date, name and amount has been written by some other person and not by the applicant which itself shows that the defence taken by the applicant as to the cheque which has been issued as security is not false and baseless. He submits that the courts below has failed to consider that the preponderance of probability lies in favour of the applicant and thus have committed grave illegality in not considering the specific provisions of Negotiable Instruments Act . Reliance has been placed by him in the matter of **Rangappa Vs. Sri Mohar** reported in **2010 AIR (SCW) 2946** and **T.P.Murugan (dead) Through Lrs. Vs. Bojan** reported in **2018 AIR (SCW) 3601**.

6. On the other hand, counsel for respondent No.1 supported the impugned order.

7. Heard counsel for the parties and perused the material available on record.

8. Before the trial court it is not disputed by the applicant that he gave cheque to the respondent and he admitted his signature on the cheque but his defence is that he gave a blank cheque after signing on it to the complainant for the security purpose but the same was misused by the complainant by filling it himself or from other person with ulterior motive. The applicant has examined the handwriting expert in support of his defence. Under Section 139 of the Negotiable Instrument Act, once a cheque has been signed and issued in favour of the holder, there is statutory presumption that it is issued in discharge of a legally enforceable debt or liability. This presumption is

a rebuttable one, if the issuer of cheque is able to discharge the burden that it was issued for some other purpose like security for a loan. Section 139 of the N.I. Act reads as under:

“139. Presumption in favour of holder ---- It shall be presumed, unless the contrary is proved, that the holder is a cheque received the cheque of the nature referred to in [section 138](#) for the discharge, in whole or in part, if any debt or other liability.”

9. Complainant has filed Ex.D-1 and D-2 regarding agreement and both the documents show that the applicant and the complainant had entered into an agreement of sale deed in respect of the land. The applicant has admitted his signature on the cheque. Under Section 118 (A) of the Negotiable Instruments Act, the court is obliged to presume, until the contrary is proved, that the promissory note was made for consideration. In ***Krishna Janardhan Bhat Vs. Dattatraya G.Hegde*** (supra) it has been held that “It is also a settled position that the initial burden in this regard lies to the defendant to prove the non-existence of the consideration by bringing on record such facts and circumstances which would lead the court to believe the non-existence of the consideration either by direct evidence or by preponderance of probabilities showing that the existence of consideration was improbable, doubtful or illegal. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of consideration, the complainant would invariably be held entitled to the benefit of presumption arising u/s. 118 (a) in his faovur. Therefore, the rebuttal does not have to be conclusively established but such

evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonably being that of the prudent man." Even though it is true that the plaintiff's evidence was not believed yet the same could not be made basis for rejecting his claim because obligation upon the applicant to lead evidence for the purposes of "to prove his case", could not have been insisted upon because the defendant has prima facie or initially not discharged his onus of proof by showing directly or probalising the non-existence of consideration.

10. The Trial Court and the Appellate Court has arrived at the specific concurrent finding that the cheque had admittedly been signed by the applicant. The scope of criminal revision is very limited under Section 397 Cr.P.C. as it imposes certain limitations for exercise of revisional jurisdiction. Thus, this Court does not find even any illegality or perversity in the orders passed by the Courts below and does not call for interference. Accordingly, I find no merit in the present revision. Same is accordingly dismissed.

Sd/-

(Rajani Dubey)

Judge