

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 573 of 2019**

Order Reserved on : 04/09/2019

Order Delivered on : 04/12/2019

- Manohar Motwani S/o Late Basant Motwani, aged about 27 years, R/o Sindhipara, Bemetara, Tahsil & District Bemetara (C.G.)

----Petitioner**Versus**

- Sanjay Tiwari S/o Shri Krishna Kumar Tiwari, aged about 44 years, R/o village - Kampa, Post - Kanhera, Tahsil - Saja, District Bemetara (C.G.)

---- Respondent

For Petitioner	:	Shri Vaibhav Goverdhan, Advocate.
For Respondent	:	Shri Malay Bhaduri, Advocate.

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

01. Challenge in this revision is to the order dated 06.04.2019 passed in Criminal Revision No.04/2019 by Sessions Judge, Bemetara, whereby the revision preferred by the respondent against the order of acquittal dated 15.01.2019 passed by the learned Judicial Magistrate First Class, Bemetara, in Criminal Case No.67/2018 has been allowed, set aside the order dated 15.01.2019 and remanded the matter to the trial Court with direction that the complaint

case be taken on the number for re-hearing, and according to the order passed on 07.12.2018, forward the trial of the case as per the provisions of Chapter 20 of the Cr.P.C. from the stage of complainant evidence.

02. Brief facts of the case are that the respondent (complainant) filed a complaint against the applicant under Section 138 of the Negotiable Instrument Act, 1881 (for short 'the N.I. Act') on the ground that on 10.05.2018, the applicant had demanded Rs.3,00,000/- from the complainant for his domestic use and, in turn, the applicant had given a cheque bearing No. 816217 dated 10.05.2018 to the respondent, which was dishonored by the Bank on account of 'Stop Payment'. The respondent (complainant) sent a legal notice to the applicant and, after necessary formalities, he filed the criminal complaint against the applicant. On 07.12.2018, the learned trial Court framed the charges against the applicant under Section 138 of the N.I. Act. The applicant filed preliminary objection before the trial Court regarding maintainability of the complaint case and the learned trial Court, on 15.01.2019, allowing the preliminary objection discharged the applicant of the charge under Section 138 of the N.I. Act. Against the said order, the respondent (complainant) filed revision petition before the Court of Sessions, which was allowed, set aside the order dated 15.01.2019 and remanded the matter to the trial Court with

the direction as mentioned above in para 1 of this order. Hence, this revision petition by the accused/applicant.

03. Learned counsel for the applicant submits that the Court below has not taken into consideration the fact that the revision against discharge/acquittal is not maintainable. The trial Court, after framing the charge, has allowed the preliminary objection of the applicant and considering the same, it was allowed and discharged the applicant of the charge which lead to acquittal of the applicant. He also submits that the learned revisional Court has also not taken into consideration that the case was instituted on the complaint, therefore, against the order of the learned trial Court, only an acquittal appeal under Section 378 Cr.P.C. is maintainable. Therefore, the impugned order passed by the learned revisional Court is illegal and deserves to be set-aside. In support of his argument, learned counsel placed reliance on the decision of Hon'ble Supreme Court in the matter of **Subhash Chand V. State (Delhi Administration)** reported in **2013 AIR SCW 356** and the order dated **21.07.2019 of Punjab and Haryana High Court** passed in the matter of **Ranjit Singh V. Jugraj Singh and another.**

04. Learned counsel for respondent supporting the impugned order submits that at the stage of framing the charge, the Court has to prima-facie consider whether there is sufficient ground for proceeding against the accused and the

document filed by the accused cannot be considered. He placed reliance on the decision of Hon'ble Supreme Court in the matter of **Hem Chand V. State of Jharkhand** reported in **2009 (1) C.G.L.J. 15 (SC)**.

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

06. It is beyond any doubt or dispute that at the stage of framing of charge, the Court will not weight the evidence. The stage for appreciating the evidence for the purpose of arriving at a conclusion as to whether the prosecution was able to bring home the charge against the accused or not would arise only after all the evidences are brought on records at the trial.

07. The learned trial Court, after registration of complaint, issued summon against the applicant, framed charges against him under Section 138 of the N.I. Act and when the applicant filed preliminary objection, the learned trial Court allowing the same discharged him from the offence. The learned revisional Court has rightly observed that the trial under Section 138 of the N.I. Act was summon trial in nature. That apart, in the light of **Hem Chand** (supra), the revisional Court has rightly observed in para 12 that the presumptions that can be made in favor of the holder under Section 139 of the N.I. Act, including the presumptions described under Section 118 of the N.I. Act, cannot be rebutted without evidence at the primary stage.

08. For the reasons aforementioned, there is no merit in this revision which is dismissed accordingly.

Sd/-
(Rajani Dubey)
JUDGE

pekde