

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRR No. 784 of 2019**

1. Kamal Nayan Pandey S/o Shri Joshik Prasad Pandey, aged about 48 years, Branch Manager, District Cooperative Central Bank, Maryadit, Branch Pratappur, District Surajpur, Chhattisgarh.
2. Santosh Nawik S/o Shri Harinarayan Nawik, aged about 34 years, Samiti Prabandhak, Dawankara, Tahsil Pratappur, District Surajpur, Chhattisgarh.

**---- Applicants**

**Versus**

Sunil Tiwari S/o. Late Ramkesh Tiwari, aged about 43 years, occupation : Service, R/o Godhanpur, Police Station and Tahsil Ambikapur, District Sarguja, Chhattisgarh.

**---- Respondent**

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| For Applicant      | : Mr. V.K. Pandey, Advocate    |
| For the Respondent | : Mr. Sanjay Agrawal, Advocate |

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**Order on Board**

**22-11-2019**

1. This revision petition has been brought being aggrieved by the order dated 15.2.2019 passed by the Additional Sessions Judge, Pratappur, District Surajpur, Chhattisgarh in Criminal Revision No. 8 of 2017.
2. It is submitted by counsel for the applicants that the respondent had filed a complaint against the applicants and one Ashok Tiwari. The trial Court by order dated 27.3.2017 took cognizance against co-accused - Ashok Tiwari alone for his trial for the offences under Sections 420, 467, 468 and 471 of the IPC, however, the trial for taking cognizance against these applicants was dismissed under Section 202 of the Cr.P.C. This order was challenged in criminal revision before the Revisional Court, which was disposed off by the Revisional Court, without issuance of notice, on 27.3.2017 directing the trial Court to take cognizance against

the applicants. This order was challenged before this Court in Criminal Revision No. 845 of 2017, which has been disposed off on 27.7.2018 by setting aside the order of the Revisional Court below with a direction to consider the revision petition afresh. Subsequent to this, the Revisional Court below has passed the impugned order by allowing the revision petition and directing the trial Court to take cognizance against the applicants on the basis of the evidence present in the complaint case.

3. It is further submitted by counsel for the applicants that the trial Magistrate has rightly dismissed the complaint against these applicants under Section 202 of the Cr.P.C. for the simple reason that the statement in complaint and the statement of the complainant both are simple allegations which is not evidence in any respect.
4. Learned counsel for the applicants placed reliance on the judgment of the Supreme Court in the case of **Fiona Shrikhande vs. State of Maharashtra and Another** reported in **(2013) 14 SCC 44**, wherein, it was held that since the Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, the Higher Courts should not ordinarily interfere with the same. Hence, it is prayed that the applicants be granted relief.
5. Learned counsel for the respondent opposes the submissions and submits that the statement in the complaint as well as the statement of the complainant in the preliminary enquiry before the Court of Judicial Magistrate First Class is very clear against these applicants. Dismissal of the complaint against these applicants by the learned Magistrate was totally uncalled for and the order has been rightly set aside by the Revisional Court below by the impugned order making a reference to the judgment of the Supreme Court in the case of **Fiona Shrikhande vs. State of Maharashtra and Another** (supra), wherein, it was held

that the scope of enquiry under [Section 202](#) of the Cr.P.C. is extremely limited in the sense that the Magistrate, at this stage, is expected to examine *prima facie* the truth or falsehood of the allegations made in the complaint and the Magistrate is not expected to embark upon a detailed discussion of the merits.

6. It is further submitted by counsel for the respondent that it is a case in which co-accused – Ashok Tiwari fraudulently made a withdrawal from the bank account of the complainant. Applicant No.1 – Kamal Nayan Pandey is a Branch Manager and applicant No.2 – Santosh Nawik is the person who identified the co-accused as complainant, therefore, at this stage there is clear evidence to show the involvement of these applicants.
7. Learned counsel for the respondent relying on the judgment of the Supreme Court in the case of **S.K. Miglani vs. State (NCT of Delhi)** reported in **(2019) 6 SCC 111**, it is submitted that the Bank Manager can also be prosecuted if there is sufficient evidence present against him.
8. Heard counsel for both the parties and perused the documents.
9. According to the complaint filed, the respondent/ complainant came to know in the year 2015 that between 2010 – 2014, that in total, Rs.8,76,900/-was fraudulently withdrawn from his account. After making enquiry, he found that the withdrawal forms submitted in the bank did not bear his own signature. The respondent had also not authorized any other person for making withdrawals and he also came to know in the enquiry that applicant No.2 had identified co-accused – Ashok Tiwari as respondent, on the basis of which, the withdrawal was made. Therefore, he has alleged that these applicants and the co-accused conspired and collaborated for making the fraudulent withdrawal. In the statement before Court, the respondent has stated similarly and stated

that applicant No.2 was acquainted with the applicants as well as co-accused – Ashok Tiwari.

10. On considering the complaint and the statement under Section 202 of the Cr.P.C., I am of the view that there is evidence against applicant No.2 as well apart from there is evidence against co-accused – Ashok Tiwari, however, with regard to applicant No.1 there is no specific statement by way of evidence present against him. It is only opinion of the respondent that he may also have been involved in the said withdrawal and such an opinion cannot be made a ground to convict any person unless there is some sort of confirmation by way of other evidence. Therefore, the order for issuance of process against applicant No.1 in the impugned order does not appear to be sustainable, however, the order against applicant No.2 in the impugned order is proper, legal and correct which needs no interference. Hence, on the basis of these findings, this revision petition is partly allowed, the impugned order against applicant No.1 is set aside and the order against applicant No.2 is upheld and maintained as it is.

11. Accordingly, this revision petition is disposed of.

Sd/-

**(Rajendra Chandra Singh Samant)**  
Judge