

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(Cr.) No. 464 of 2019

1. M/s Abhinav Constructions Through Suman Kumar S/o Shri Saligram Aged About 55 Years, Office At Plot No. 61, Behind Blue Bird School, Near Muskan Dental Clinic, Kosabadi Korba, Tehsil And District- Korba, Chhattisgarh
2. Suman Kumar S/o Shri Saligram Aged About 55 Years R/o MIG-I/139, Pt. Ravi Shankar Shukla Nagar, Korba, Tehsil And District- Korba, Chhattisgarh

---- Petitioners

Versus

- Manoj Kumar S/o Shivdani Singh Aged About 47 Years R/o Plot No. 134, Sada Colony, Jamanipali, NTPC, Post- Jamanipali, Tehsil- Katghora, District- Korba, Chhattisgarh

---- Respondent

For Petitioners	:	Mr. Anand Mohan Tiwari, counsel for petitioners.
For respondent	:	Mr. Ali Asgar, counsel for the respondent.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

23-07-2019

Heard.

1. This petition has been brought under Article 226 of Constitution of India praying for issuance of appropriate writ and directions.
2. Challenge is to the order dated 04.12.2018 passed by the Court of J.M.F.C., Kathghora in Criminal Complaint No.3544/2018 taking cognizance in the case against the petitioner for his trial in offence under Section 138 of Negotiable Instruments Act.
3. Learned counsel for the petitioner has made submissions and placed reliance on the judgment of Supreme Court in ***S.M.S. Pharmaceuticals***

Ltd. Vs. Neeta Bhalla And Another reported in **(2005) 8 SCC 89**, judgment of Rajasthan High Court in **Gordhansingh And Others Vs. Suwalal And Kalyanbux And Others** reported in **(1959) AIR (Raj) 156** and the judgment of this Court in **Sanjay Agrawal Vs. State of Chhattisgarh And Others** reported in **W.P.(Cr.) No.28 of 2012**. Submissions have been made on the legality and propriety of the order passed by the Court concerned.

4. The learned counsel for the respondent submits that the petition filed under Article 226 of Constitution of India is not maintainable in this case for the reason that the petitioner has equally efficacious remedy available under the statute. Therefore, this petition may be dismissed.
5. Heard learned counsel for both the parties and perused the documents.
6. On perusal of the petition it appears that the only respondent- Manoj Kumar is a private party, who has been made respondent in personal capacity, therefore, the respondent is not a State within the meaning of Article 12 of Constitution of India. In **S.P. Lakshmanan Vs. The Judicial Magistrate, First Class** reported in **2010 (3) MWN (Cri.) DCC 36**, it was held by the High Court of Madras in Paragraph No.13 of the Judgment, that a writ petition against the order passed by the Judicial Magistrate in a proceeding under Section 138 of Negotiable Instruments Act is not maintainable for the reason that equally efficacious remedy is available to the petitioner to ventilate his grievance before the appropriate forum. It has been specifically held in **State of Haryana And Others Vs. Bhajan Lal And Others** reported in **1992 Supreme Court Cases (Cri) 426** that when the exercise of power can be made under Section 226 or Section 482 of Cr.P.C. in that case it shall not be necessary to invoke the provisions of Article 226 of Constitution of India. Therefore, on this basis that the respondent in this case is not State and

that the petitioners have equally efficacious remedy available under the statute to pursue his grievance. Therefore, this petition praying for invoking the constitutional powers is not maintainable, which is dismissed at motion stage.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika