

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1530 of 2018

Davinder Singh Malik, S/o. Avtar Singh Malik, Aged About 55 Years, R/o. 2/72, Rajendra Nagar, Sector-5, Gajiyabad U. P. --- **Petitioner**

Versus

Vijay Kumar Tyagi, S/o. Fatehchand Tyagi, Aged About 62 Years, R/o. New Lalaji Cloth House, Main Market, Kirandul Bacheli, District South Bastar Dantewada Chhattisgarh

---- **Respondent**

For Petitioner : Mr. Shobhit Koshta, Advocate
 For Respondent : Mr. Manish Sharma with Mr. Pragalbha Sharma, Advocates

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

11.03.2019

1. The present petition is filed for quashing the Complaint Case No.517/2017 registered under Section 138 of the N.I. Act on the ground that the alleged cheque, which is stated to have been bounced, was not given to the respondent. He submits that the cheques have been bounced not for the reason of insufficient funds, but it was destroyed in the System. Since the cheques were lost, immediately a report was made to the Bank and the Bank accordingly destroyed all other cheques of same series.
2. He relies on a case law reported in ***2009 AIR SCW 3966 – Raj Kumar Khurana versus State (NCT of Delhi)***

& Another and submits that if the cheques have been lost then the provisions of Section 138 of NI Act will not be attracted.

3. Learned counsel for the respondent submits that due to interse transaction between the parties, the cheque was given and it was not known to the receiver of the cheque that if certain cheques after issuance were destroyed in the System and in such case, if the contention of the petitioner is accepted, then the entire case would fall. It is submitted that the facts which are advanced can only be appreciated during the course of trial and the petitioner has not appeared before the Trial Court.
4. Perused the documents. The document Annexure P-4 is a certificate given by the Bank that the alleged cheque No. 201947 was destroyed in the System and it is the case of the complainant that such cheque was matter of negotiation between the parties, therefore, certain disputed facts came to the fore. At this stage, if the contention of the petitioner is accepted, it will amount to destroy the right of the complainant since no finality can be attached by accepting certain version as the same can be established during the course of trial only.
5. The petitioner shall be at liberty to put forth his defence before the trial Court and without adducing evidence by the parties, the truth cannot come to fore. In the facts situation of the case, the interference at this stage would

amount to attaching finality to the complaint filed on either side. The case law relied on by the petitioner can only be appreciated after the evidence is adduced and not before that. The petition is, therefore, premature at this stage and is dismissed.

**Sd/-
(Goutam Bhaduri)
Judge**

Rao