

## **HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPCR No. 508 of 2019**

- Markande Prasad Chandra, S/o Shri Babu Lal Chandra, Aged About 32 Years, R/o Chandra Kirana Stores, Degunala, Kohadiya, Korba, Tehsil And District- Kroba, Chhattisgarh.

**---- Petitioner**

**Versus**

1. Sri Gaurav Vadhvani, Gaurav Motors ,power House Road Transport Nagar, Korba, Tehsil & District- Kroba, Chhattisgarh.
2. Branch Manager Nitin Gaikwar, Mahendra & Mahendra Financial Services Limited, First Floor, Ashoka Complex, Mainroad Transport Nagar, Korba, Tehsil & District- Korba, Chhattisgarh.

**---- Respondent**

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| For Petitioner       | : | Shri Sanjay Patel, Advocate.          |
| For State/respondent | : | Shri Avinash K. Mishra, Panel Lawyer. |

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

**Order On Board**

**19/07/2019**

Heard.

1. Petition under Article 226 of Constitution of India has been brought praying for issuance of appropriate writ(s)/directions()/order(s) etc.
2. It is submitted by counsel for petitioner that the petitioner has filed a complaint under Section 138 of Negotiable Instruments Act r/w Section 420 of IPC before the Court of Chief Judicial Magistrate, Korba which has been registered as complaint case No.6051 of 2011. One Nitin Gayakwar, who has been working as Branch Manager and arrayed as an accused No.2 in that case, is in absconsion and permanent warrant of arrest has been issued against him. The petitioner made a prayer before the Court below to implead the present Branch Manager of the concerned bank as non-applicant No.2 but that has been denied by the Court below vide order dated 3.4.2019, therefore, it is prayed that appropriate direction be issued.

3. Considered on the submissions made by the counsel for petitioner. The respondent No.2 in the case concerned had been made party in personal capacity alleging commission of offence under Section 420 of IPC, therefore, the present Branch Manager of the said bank cannot be prosecuted for the same offence, However, the petitioner shall have liberty to call the present Branch Manager of the said bank as a witness in that case to support the evidence for prosecution. Although the petitioner may have a claim on the civil side against the said bank. Hence, the Court below has rightly rejected the prayer made by the petitioner. However, the petitioner shall have liberty to call the present Branch Manager of the said bank as a witness in that case to support the evidence for prosecution.
4. With the above observations, the petition is disposed off.

Sd/-  
**(Rajendra Chandra Singh Samant)**  
JUDGE

Nisha