

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 854 of 2016

Deepak Kumar Ratre S/o Shri Revram Ratre, aged about 45 years, R/o village Nattikhar, near Palaria Farm House, Police Station Balco Nagar, Civil & Revenue District Korba, Chhattisgarh.

---- Applicant

Versus

1. Ram Kumar Singh S/o late Garjan Singh aged about 55 years, R/o Purani Basti, Korba, Chhattisgarh.
2. State of Chhattisgarh through District Magistrate, District Korba, Chhattisgarh.

---- Respondents

For Applicant	: Mr. Ashutosh Shukla, Advocate
For Respondent No.1	: Mr. Vikram Dixit, Advocate
For Respondent No.2	: Mr. Devendra Pratap Singh, Dy. A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

20-11-2019

1. This revision petition has been brought challenging the legality, propriety and correctness of the order dated 29.8.2016 passed in Criminal Appeal No. 31 of 2016 by the District & Sessions Judge, Korba upholding the judgment of conviction and sentence passed by the trial Court.
2. Respondent No.1 – Ram Kumar Singh filed a complaint under Section 138 of the Negotiable Instruments Act (for short 'the NI Act') against the applicant stating that the applicant for payment of dues had drawn a cheque No.002010 of ICICI Bank, Korba on 5.12.2010 of Rs.24,00,000/- from his account. Respondent No.1 presented the cheque for encashment in Canara Bank, Korba on 31.12.2010. When the cheque was dishonoured on account of insufficient balance in the account of the applicant, respondent No.1 then issued a legal notice on 10.1.2011, which was received by the applicant on 13.1.2011 to which the applicant

did not respond. Subsequent to which, respondent No.1 filed a complaint on 1.2.2011.

3. The trial Court took cognizance against the applicant and after reading out the substance of accusation against him under Section 138 of the NI Act, the applicant was subjected to trial and convicted for the offence under Section 138 of the NI Act, and he was sentenced with RI for one year with order of paying compensation of Rs.25,00,000/- to respondent No.1 with default stipulation. Therefore, the applicant preferred Criminal Appeal No. 31 of 2016 before the Court of Sessions Judge and by the judgment dated 29.8.2016, the appellate Court has upheld the conviction and sentence against the applicant. Hence, this revision.
4. It is submitted by counsel for the applicant that in fact there had been an agreement for sale of land between the applicant and respondent No.1 which was subsequently cancelled. The applicant had given the cheque in security for taking advance by him in the said transaction, however, after returning the amount in cash respondent No.1 had deliberately retained the cheque and has misused it, therefore, the presentation of cheque in bank by respondent No.1 was done with a fraudulent intent and thereafter, the complaint has been filed maliciously. The trial Court and Appellate Court have not appreciated the evidence in its true spirit and convicted the applicant. Therefore, it is prayed that this revision be allowed and the conviction and sentence against the applicant by the Courts below be set aside.
5. Learned counsel for respondent No.1 opposes the submissions made and the grounds raised in the revision petition. It is submitted by counsel for respondent No.1 that the applicant has created a new story in his defence regarding the return of the advance amount in cash. The trial Court and the Appellate Court have correctly appreciated the

evidence on record and convicted the applicant. Hence, this revision petition is not maintainable.

6. Heard counsel for both the parties and perused the documents.
7. On perusal of the evidence present in the record of the trial Court, it is admitted that the applicant had issued a cheque in favour of respondent No.1 for payment of Rs.24,00,000/- against the advance taken by him for the agreement to sale of land which was later on cancelled. The ground raised in this revision petition that the applicant had in fact returned the amount to respondent No.1 in cash, needs to be examined.
8. Ram Kumar Singh (CW-1) has given the statement in support of his complaint in examination-in-chief. In cross-examination, he has denied the adverse suggestions in defence by the applicant/ accused. He has denied this suggestion that neither any amount was paid to the applicant nor any bank cheques were obtained from the applicant for security purposes. He has also denied that after receiving Rs.10,00,000/- in cash from the applicant he had agreed for returning the blank cheques and has not returned the same. He has also denied the suggestion that he made fraudulent use of all the cheques. He denied that the said blank cheques were made use of in fraudulent manner by Gurmeet Singh and Anil Kumar Pahuja for filing malicious prosecution. One agreement (Ex. D/1) was confronted to this witness and this witness has denied that his signature is present on this agreement. According to this agreement, he has received Rs.10,00,000/- from the applicant to return the blank cheques to him. He has also denied receiving legal notice from the applicant demanding the return of cheques but the said notice was not confronted to this witness.
9. After the denial statement of respondent No.1, the burden was shifted upon the applicant/ accused to prove the contents and signature of

Ex. D/1 to establish his case. The applicant did not lead any evidence and did not produce any witness in support of Ex. D/1 which shows that the applicant failed in discharging his burden. Therefore, after the appreciation of the evidence as present in the record of the trial Court, it is found that no error has been committed by the trial Court as well as by the Appellate Court in appreciating the evidence and coming to a conclusion of the conviction of the applicant and as such, the impugned order and the judgment of the trial Court both are sustainable and there is no need for interference in the same. Hence, for these reasons, this revision petition is found without any substance, which is liable to be dismissed.

10. Accordingly, this revision petition is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge