

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 850 of 2016

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

---- Applicant

Versus

1. Anil Kumar Pahuja, S/o. Laxman Das Pahuja aged about 35 years, R/o. Prakash Video Main Road, Korba, Chhattisgarh.
2. State of Chhattisgarh through District Magistrate, District Korba, Chhattisgarh.

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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. 33 of 2016 by the District & Sessions Judge, Korba upholding the judgment of conviction and sentence passed by the trial Court.
2. Respondent No.1 – Anil Kumar Pahuja 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.002008 of ICICI Bank, Korba on 5.11.2010 of Rs.4,00,000/- from his account. Respondent No.1 presented the cheque for encashment in State Bank of India, Korba on 29.11.2010. 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 14.12.2010, which was received by the applicant on 16.12.2010 to

which the applicant did not respond. Subsequent to which, respondent No.1 filed a complaint on 10.11.2011.

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.4,40,000/- to respondent No.1 with default stipulation. Therefore, the applicant preferred Criminal Appeal No. 33 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 brought by respondent No.1 present in the record of the trial Court, it is found that one technical and legal error has occurred which has been ignored by the trial Court as well as by the Appellate Court. Respondent No.1 – Anil Kumar Pahuja was examined as CW-1 on 13.11.2013. His cross-examination was though started by counsel for the applicant, but not completed due to completion of Court hours, therefore, the cross-examination was postponed.
8. On perusal of all the order-sheets of the trial Court, neither the trial Court ever made any effort to get the cross-examination of respondent No.1 completed on any further date, nor it is mentioned that counsel for the applicant had made a statement of giving up the cross-examination of respondent No.1. Therefore, the statement of respondent No.1 cannot be treated as the evidence contemplated in the Evidence Act as provided under Section 137 of the Evidence Act which includes examination-in-chief, cross-examination and re-examination, therefore, it is a case in which the applicant did not have the full opportunity of cross-examining respondent No.1. It appears that the applicant remains oblivious that he has not completely examined respondent No.1 and never they raised this circumstance in the argument before the trial Court or Appellate Court and also before this Court. This Court cannot ignore the command given in the provision of law for the simple reason that the applicant has entitlement to raise this ground that he has not been given the fullest opportunity in his defence.
9. The procedure for trial and complaint under Section 138 of the NI Act is the procedure for summons in the trial under the Code of Criminal

Procedure. Section 254 of the Code of Criminal Procedure provides that the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution and also to hear the accused and take all such evidence as he produces in his defence. It is a clear case in which the applicant was denied of his right to defence and also he was not even assisted by the counsel defending him. Learned trial Court and the Appellate Court should not have lost sight of this fact that has arisen from the circumstance and should have afforded the proper opportunity to the applicant to defend his case. Therefore, this defect found in the procedure of trial needs to be cured and the conviction and sentence against the applicant cannot stand, as such, for this reason as mentioned herein-above the conviction and sentence against the applicant by the trial Court as well as by the Appellate Court both are found to be defective which are unsustainable. Hence, this revision petition is allowed and the judgment of conviction and sentence of the applicant is set aside. The case is remanded back to the trial Court with a direction to complete the procedure that has been left during the trial and dispose off the case in accordance with law.

Sd/-
(Rajendra Chandra Singh Samant)
Judge