

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1310 of 2018**

Order Reserved on : 10/07/2019

Order Delivered on : 09/08/2019

- M/s Moon Light Agency, Proprietor : Aasandas Mohnani
S/o - Hariram Mohnani, aged about 52 years, R/o -
Sindhi Colony, Durg, District Durg (C.G.)

----Petitioner**Versus**

- Bhagwan Das Vishvakarma, S/o Late Shrawan Lal, aged
about 48 years, R/o Block No. 20/B, Nehru Nagar (West),
Bhilai, Tahsil and District Durg (C.G.)

---- Respondent

For Petitioner	:	Shri Amrito Das, Adv.
For Respondent	:	Shri Malay Shrivastava, Adv.

Hon'ble Smt. Justice Rajani Dubey**C A V Order****09/08/2019**

01. Present revision is directed against the impugned order dated 24.09.2018 passed in Criminal Case No.6849/2015 by learned Judicial Magistrate First Class, Durg, whereby the learned trial Court has framed charges under Sections 420, 467, 468 and 471 IPC against the applicant.

02. Brief facts of the case are that before the trial Court, the respondent herein filed a complaint case against the petitioner and acquitted accused namely Dr. Sunanda Denge, Manish Kumar, Jaypal Rajpal and Sunil Mohanani alleging

therein that on 01.09.1998, the petitioner herein has taken certain amount from the respondent on credit and had executed a promissory note. On demand being made, the petitioner gave him a cheque amounting to Rs.60,000/- vide cheque dated 18.02.2000 bearing No.022708 drawn on Nagrik Sahakari Bank, Durg, which was dishonoured on account of insufficient fund. Thereafter, legal notice to this effect was given to the petitioner and a complaint case under the Negotiable Instruments Act was filed before the learned Judicial Magistrate First Class, where the petitioner has given incorrect information in the Court that at the time of giving cheque to respondent, he had taken signature of respondent in the counter slip, which has been proved by the State Examiner of Questioned Documents and that counter slip has been presented in the Court, wherein he has forged the signature of respondent which has been proved by the State Examiner of Questioned documents. The above act of the petitioner was fraudulent with an intention to cheat the Court and respondent. It has been prayed to take cognizance of the offence against the petitioner. The learned Court below, after following the procedure laid down under Section 202 Cr.P.C., took cognizance of the offence and registered the case against petitioner herein. The complaint case filed by the respondent herein against the petitioner and other co-accused persons has been rejected by order dated 23.12.2010. Against the said order, the respondent herein filed Criminal

Revision No.74/2011 before the Additional Sessions Judge (F.T.C.), Durg. The learned revisional Court, vide order dated 11.08.2014, set aside the order dated 23.12.2010 and directed the learned trial Court to register the offence against the petitioner and acquitted co-accused. Thereafter, the learned Judicial Magistrate First Class, Durg, proceeded with the matter and after perusal of the complaint and taking into consideration the evidence on record, found no prima-facie case with regard to criminal conspiracy and cheating against the accused persons Dr. Sunanda Denge, Manish Kumar, Jaypal Rajpal and Sunil Mohanani and the ingredients of offence was established only against the petitioner/accused and hence, vide order dated 24.08.2015, acquitted the co-accused and issued summon against the petitioner for his presence. The petitioner appeared before the learned trial Court and the learned trial Court heard the matter with regard to framing of charges against the petitioner, and after considering the evidence on record, vide order dated 20.02.2018, found sufficient evidence on record for framing charges against the petitioner and the matter was fixed for framing of charges on 23.02.2018 and vide impugned order dated 24.09.2018, the trial Court framed charges against the petitioner herein. Hence, this revision.

03. Learned counsel for the petitioner submits that the learned Court below ought to have taken into consideration that vide order dated 29.07.2004, the Judicial Magistrate First

Class has acquitted the petitioner of the offence under Section 138 of N.I. Act in Complaint Case No.1326/2002, which was initiated on account of dishonour of cheque No.022708. He further submits that being aggrieved by the said order of acquittal, the respondent had preferred Criminal Revision No.493/2004 before this High Court, which was dismissed with liberty to file appropriate petition along with appeal in terms of Section 378 of Cr.P.C. He also submits that the learned trial Court, while passing the impugned order, has failed to appreciate that the well established common rule of law that no one should be put to peril twice for the same offence. The principle which is incorporated in Section 300 of Cr.P.C. is that no man should be vexed with more than one trial for the offence arising out of identical acts committed by him. He further submits that when the offence under Section 138 of Negotiable Instrument Act has already been subject of judicial adjudication against the petitioner and it has ended in his acquittal, it is abuse of criminal justice to allow repetition of adjudication in a separate trial on the same set of evidence and facts. Article 20 (2) of the Constitution of India also embodies protection against a second trial after conviction for the same offence. In support of his argument, he placed reliance on the decisions of Hon'ble Apex Court in the matter of **State by Central Bureau of Investigation V. S. Bangarappa¹, Kolla Veera Raghav Rao V. Gorantla**

1 AIR 2001 SC 222

Venkateswara Rao and Ors.², Pepsi Foods Ltd. And Ors. V. Special Judicial Magistrate and Ors.³, Sunil Kumar V. Escorts Yamaha Motors Ltd. And Others⁴, and D.P. Gulati, Manager Accounts, Jetking Infotrain Limited V. State of Uttar Pradesh and Another⁵.

04. Learned counsel for respondent supports the impugned order of trial Court.

05. I have heard learned counsel for the parties and perused the material on record.

06. Learned counsel for the applicant produced a copy of order dated 12.05.2017 passed by this High Court in Criminal Misc. Petition No.20/2017 and other connected matters, whereby this Court quashed the order registering offences as well as the revisional order and consequent action, if any, wherein it has been contended by learned counsel for the applicant that main offence alleged against the petitioner/applicant is of giving false evidence and for using evidence known to be false that is said to have been committed while filing the documents before the Court.

07. The learned trial Court, in its order dated 24.08.2015, has registered the case against the applicant under Section 420, 467, 468 and 471 IPC and vide impugned order dated 24.09.2018, the trial Court framed charges against the applicant.

² AIR 2011 SC 641

³ Air 1998 SC 128

⁴ (1998) 8 SCC 468

⁵ (2015) 11 SCC 730

08. In **Sajjan Kumar V. C.B.I.**⁶, Hon'ble the Apex Court held that at the time of framing of charges, the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of charges, the Court is not expected to go deep into the matter and hold that the materials would not warrant conviction. The Court is required to evaluate the material on record at the stage of Sections 227 or 239 of the Code, as the case may be. Hon'ble the Supreme Court in the matter of **Om Wati (Smt) and Another V. State, Through Delhi Admn. And Others**⁷, has held in para 10 as under:-

“10. A three-Judge Bench of this Court in Supdt. & Remembrancer of Legal Affairs, W.B. V. Anil Kumar Bhunja [(1979), 4 SCC 274] reminded the courts that at the initial stage of framing of charges, the prosecution evidence does not commence. The court has, therefore, to consider the question of framing the charges on general considerations of the material placed before it by the investigating agency. At this stage, the truth, veracity and effect of the judgment which the prosecution proposes to adduce are not to be meticulously judged. The standard of test, proof

6 (2010) 9 SCC 368

7 (2001) 4 SCC 333

and judgment which is to be applied finally before finding an accused guilty or otherwise is not exactly to be applied at the stage of framing the charge. Even on the basis of strong suspicion founded on materials before it, the court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event be justified in framing the charges against the accused in respect of the commission of the offence alleged to have been committed by them. Relying upon its earlier judgments in Ramesh Singh and Anil Kumar Bhunja cases this Court again in Satish Mehra v. Delhi Admn. [(1996) 9 SCC 766] reiterated ; (SCC pp.769-70, para 9).

"9. Considerations which should weigh with the Sessions Court at this stage have been well designed by Parliament through Section 227 of the Code of Criminal Procedure (for short 'the Code') which reads thus:

'227. Discharge- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.'

Section 228 contemplates the stage after the case survives the stage envisaged in the former section. When the court is of opinion that there is ground to presume that the accused has committed an offence the procedure laid down therein has to be adopted. When those two sections are put in juxtaposition with each other the test to be adopted becomes

discernible: Is there sufficient ground for proceeding against the accused? It is axiomatic that the standard of proof normally adhered to at the final stage is not to be applied at the stage where the scope of consideration is where there is 'sufficient ground for proceeding'."

09. Again, Hon'ble the Supreme Court has held in the matter of **Munna Devi Vs. State of Rajasthan and Another**⁸ that revisional powers cannot be exercised in a routine and casual manner. Recourse to such powers for quashing the charges can be taken only if there is a legal bar against the continuance of the criminal proceedings or the framing of charge or where no offence is being made out against the accused considering the entire facts stated in the FIR. In revision, the High Court cannot appreciate the evidence in the manner the trial court and the appellate court are required to do. On facts, it was premature for the High Court to have exercised its revisional powers. Trial court to conduct trial and dispose of the matter on merits.

10. Thus, in view of the aforesaid discussion and applying the principles of law laid down in **Sajjan Kumar (Supra)** and **Munna Devi (Supra)** to the facts of the present case, the instant revision is liable to be dismissed and is hereby dismissed.

Sd/-
(**Rajani Dubey**)
JUDGE