

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 334 of 2009

- Smt. Rajkumari Yadav, D/o T.R. Raghu Yadav, R/o Badelibhatha, Dallirajhara, Ward No.27, Behind Fouji Sardar, Dallirajhara, Durg.

---- Applicant

Versus

- Ahmad Raza, S/o Late Daud Musalman, Through Raza Steel Furniture, Ratnabandha Chowk, Dhamtari.

---- Respondent

For Applicant	:	Mr. Aman Kesharwani, Advocate.
For Respondent	:	None.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

26/02/2020

1. This petition has been brought being aggrieved by the order dated 23.4.2019 passed by the Court of Additional Sessions Judge (FTC), Dhamtari in which the conviction against the applicant was upheld. However, the sentence of R.I. was set aside, but the fine imposed was enhanced to Rs.42,000/-.
2. Respondent had filed a complaint under Section 138 of Negotiable Instruments Act against the applicant on the ground that the applicant had drawn a cheque of Rs.40,000/- in favor of the respondent on account of some liability. When the said cheque was presented for encashment, it was dishonored by the bank and thereafter the formalities were completed before filing the complaint. The trial Court conducted the trial in Criminal Case No.83/2006 and by judgment dated 6.11.2007 convicted the applicant under Section 138 of the Act and sentenced her with 3 months simple imprisonment along with fine amount of Rs.10,000/- with default stipulation. The appellate Court had decided the appeal by the impugned order and after upholding the

conviction, has modified the sentence in which the imprisonment part was set aside, however, fine amount has been converted to compensation of Rs.42,000/-.

3. It is submitted by the counsel for applicant that the impugned judgment suffers from infirmity. There was no direct transaction between the applicant and the respondent. Applicant had given three cheques to one Salaj Agrawal through non-applicant for purchasing a car, which he has misused, and this fact has not been appreciated by the Courts below, therefore, the applicant is entitled for acquittal. Hence, it is prayed that impugned order be set aside.
4. The respondent is not represented.
5. I have heard learned counsel for applicant and perused the documents on record.
6. On perusal of the record of complaint case, it is found that there is evidence that applicant had drawn a cheque in favor of the respondent on 13.3.2003 of Rs.40,000/-, which was dishonored. There is evidence regarding completion of legal formalities before filing of complaint. In cross-examination, it is on the suggestion of the defence, witnesses have admitted that respondent has made sale of furniture to the applicant which shows existence of liability. Although it is not mentioned in the complaint, but this fact has been brought before the Court by the applicant side itself. Respondent has denied other adverse suggestions given. In the defence evidence, the applicant has examined herself. She has not stated anything either inadmission or denial regarding drawing of cheque in favor of the respondent. Applicant Smt. Rajkumari Yadav has examined herself as DW-2 and stated that she had given three blank cheques to one Salaj Agrawal for payment of installments. After the installments were paid, Salaj Agrawal returned two blank cheques to the applicant and later on, when the witness received notice, she came to know that one of the three cheques were misused by Ahmed Raza. In what manner, the 3rd blank cheque came in possession of the respondent has not been stated by applicant in her evidence and even said Salaj Agrawal has not been examined by the applicant side to establish that the cheque presented by the respondent in bank is one of those three cheques, therefore, the defence of the applicant was not at all established. The

liability of the applicant is already found in the evidence. Other ingredients of commission of offence are clearly proved by the evidence present on record.

7. Consequently, the petition has no substance and the same is liable to be and is hereby dismissed as such.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha