

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal N. 371 of 2020**

Anil Kumar Jaiswal S/o Shri Satyanarayan Jaiswal Aged About 48 Years
R/o Ward No. 9, Kabir Ward Budhapara Village Lawan, District
Balodabazar, Bhatapara, Chhattisgarh,

---- Appellant/Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary Ministry Of Home Secretariat, Capital Complex, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District : Raipur, Chhattisgarh
2. The Station House Officer Police Station Civil Lines Bilaspur, District Bilaspur, Chhattisgarh,
3. Mahesh Kumar Duhlani S/o Shri Shankar Lal Duhlani Aged About 44 Years R/o Archana Vihar, Bilaspur, District Bilaspur, Chhattisgarh,
4. Rajkumar Agrawal S/o Late Fattechand Agrawal R/o Street No-5, Jain Mandir Road, Kranti Nagar, Bilaspur, Tehsil And District Bilaspur, Chhattisgarh,

---- Respondents

For Appellant : Shri B.P.Sharma, Advocate. .
For Respondents No.1 & 2/State : Shri Chandresh Shrivastava, Dy.A.G.

**D.B: Hon'ble the Chief Justice &
Hon'ble Shri Justice Sanjay S. Agrawal**

Judgment/Order on Board**Per Sanjay S. Agrawal, J.****16.10.2020**

1. Heard on admission.
2. This appeal has been preferred by the writ petitioner under Section 2(1) of the Chhattisgarh High Court (Appeal to the Division Bench) Act, 2006, questioning the legality and propriety of the order dated 28.08.2020 passed by the learned Single Judge in W.P.(Criminal) No.340 of 2020, whereby the relief prayed by him seeking direction against Respondent No.2 for registration of

F.I.R. for the commission of cognizable offences committed by Respondents No. 3 & 4 has been refused.

3. It is alleged in the petition that a registered deed of sale dated 24.07.2019 (Annexure P/1) was executed by his relatives, namely, Smt. Rajeshwari and others in favour of M/s. Royal Realiti in relation to the property bearing Kh.No.270/1 admeasuring 0.061 hectares of land situated at Juna Bilaspur, Tahsil and District Bilaspur for a consideration of Rs.45,00,000/- and the post-dated cheques issued in this regard by its partners were dishonoured upon its presentation before the concerned Bank and, despite of lodging the report, no action was taken with regard to the offence punishable under Sections 420, 467 and 471 IPC. Therefore, he has been constrained to file the said petition seeking a direction against Respondent No.2 for initiation of immediate action against Respondents No. 3 & 4.

4. It, however, appears from perusal of the said registered deed of sale (Annexure P/1 to the writ petition) that it was executed by Smt. Rajeshwari and others in favour of said M/s Royal Realiti through its partners on 24.07.2019, in which, the petitioner has been shown as a consenting party. It appears further that all the cheques were issued by one Mahesh Kumar, out of which, one was made on 11.02.2020 in the name of the petitioner, while rest, in the name of vendors Smt. Rajeshwari and others on 28.02.2020.

5. What is, therefore, reflected from the allegations made in the petition are that when the alleged cheques were presented, they were returned unpaid owing to 'insufficient funds' in their accounts. A complaint was, therefore, lodged on 21.02.2020 before the Police Station Civil Lines, Bilaspur as they have been cheated in such a manner by Respondents No. 4 & 5 in order to grab their valuable immoveable property. It is, however, to be noted that all the cheques

(Annexure P/2), except that of the petitioner, were made on 28.02.2020, that is, much after the lodging of the alleged complaint (Annexure P/3) made on 21.02.2020. It, therefore, appears that even prior to the issuance of those cheques, issued on 28.02.2020, except that of the petitioner's one, the alleged complaint was lodged on 21.02.2020. That apart, a bare perusal of those cheques would reveal that the same were issued only by one Mahesh Kumar, Respondent No.3 and not by Respondent No.4 (Raj Kumar Agrawal), yet he has been impleaded in the petition while invoking the discretionary jurisdiction of this Court with such a plea. The alleged complaint, therefore, appears to be a frivolous one as it rather smacks out the ulterior and mala fide intention of the petitioner himself.

6. In so far as the principles laid down in the matter of ***State of Telangana vs. Habib Abdullah Jeelani and others*** reported in (2017) 2 SCC 779 are concerned, as relied upon by learned counsel for the appellant, is however, noted to be rejected as the facts involved therein are distinguishable from the present one. That is the case where on the basis of the report under Section 154 of Cr.P.C., the F.I.R. was registered and for its quashment, inherent powers provided under Section 482 of the Code was exercised by the accused persons. While refusing to interfere the registration of an F.I.R., a direction was issued, whereby the prosecution agency was restrained from arresting the accused persons, which was held to be unsustainable in the eye of law. It would, therefore, not be of any help for the appellant in order to get the registration of F.I.R. on the basis of dishonor of the cheques, which, as observed herein above, were issued even after lodging of the alleged complaint. Therefore, merely by using the word "Chhalpurvak" as made therein would not by itself be sufficient to hold that Respondents No.3 & 4 have committed any kind of cognizable offences as alleged by the appellant. Likewise, the facts involved in the matter

of *Ashish Pratap Singh vs. State of M.P. & Ors.* passed on 12.10.2020 by the Madhya Pradesh High Court in W.P. No.13544 of 2020 are also on different footing as there was a report submitted by the Amicus Curiae revealing the commission of cognizable offence punishable under the provision of Disaster Management Act, 2005, as also of the Indian Penal Code.

7. Be that as it may, owing to the dishonor of the alleged cheques, the petitioner could initiate the proceedings, as required under Section 138 of the Negotiable Instruments Act, 1881, as observed by the learned Single Judge at para 15 of its order impugned and has, thus, rightly declined to exercise its discretionary powers after considering extensively the Supreme Court decisions in entertaining the petition.

8. In view of above, we do not find any substance in this appeal. The appeal, being devoid of merit, is accordingly dismissed at admission stage itself. No order as to costs.

Sd/-

(P.R.Ramachandra Menon)
Chief Justice

Sd/-

(Sanjay S. Agrawal)
Judge