

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1279 of 2019

- Devendra Sharma S/o Late Shri Radheshyam Sharma, Aged About 40 Years, R/o Nankathi Bus Stand, Tehsil and District Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Applicant

Versus

- Ashok Kumar Garg S/o Hanshraj Garg, Aged About 35 Years, Proprietor - Garg Sanitary House, R/o Bajrangpara, G.E. Road, Purani Bhilai, District Durg Chhattisgarh., District : Durg, Chhattisgarh

--- Respondent

For Applicant – Shri J.K. Gupta, Advocate.

For Respondent – Shri Prasoon Agrawal, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

25-02-2020

1. This criminal revision has been brought being aggrieved by the judgment dated 17-07-2019 passed by the Court of First Additional Sessions Judge, Durg in Criminal Appeal No.105/2019 in which the appellate Court upheld the conviction against the applicant, but set aside the sentence of simple imprisonment and only order was passed to pay compensation of Rs.3,00,000/- to the respondent with default stipulation.

2. It is submitted that the impugned order suffers from infirmity and therefore not maintainable. The cheque in question was never given to the respondent who just found it and misused it. There is no evidence to show that the applicant had any liability towards the respondent. The respondent's statement that many building material he had supplied to the applicant is not supported with bills, because the bills show different items. Hence, the applicant was under no obligation to provide the respondent with a cheque of the said payment which has been dishonoured by the bank. It is further submitted that if this Court does not feel inclined to allow this revision petition, then the compensation amount ordered be reduced as it is very much

excessive.

Reliance has been placed on the judgment of Hon'ble the Supreme Court in the matter of **Uttam Ram Vs. Devinder Singh Hudan and another**, (2019) 10 SCC 287.

3. Learned counsel for the respondent opposes the submission and submits that no error has been committed by the learned appellate Court. The conviction against the applicant is fully supported with evidence. The excuse on which the argument is based are baseless, there is evidence to show that there had been some transaction between the applicant and the respondent regarding purchase of hardware etc. which shows liability of the applicant to make payment to the respondent.

The claim of the applicant that his cheque was misplaced and the same has been found by the respondent and misused is totally false because the cheque that was misplaced was a cheque of different bank, i.e., Dena Bank, whereas, the cheque that was drawn for the respondent was from the account of Bank of Baroda. Therefore, the argument of the applicant is falsified. There is no ground present to interfere in the impugned judgment. Therefore, the revision petition be dismissed.

4. On perusal of the statement of the witnesses and the documents present in the record of the case, the first ground taken by the applicant that his cheque was misplaced which was found by the respondent and misused is found to be baseless, as according to his own statement the cheque misplaced was with respect to the account of Dena Bank and the cheque that has been dishonoured from his account is of Bank of Baroda. The respondent has stated in evidence and brought documentary proof to show his transaction with the applicant, which could not be specifically denied and totally rejected by the applicant side. Therefore, presence of transaction between both of them shows that there had been liability of the applicant for making payment to the

respondent side. Hence, the drawing of cheque by the applicant in favour of the respondent has presumption under Section 118 of the Negotiable Instruments Act, that the cheque was drawn for consideration. Similarly, presumption is present in favour of the respondent also under Section 139 of the Negotiable Instruments Act that this cheque was received by the respondent against any debt or any other liability. The evidence regarding liability has already been examined.

5. Considered on the quantum of the compensation. The cheque drawn was of amount Rs.2,50,400/-. The respondent had to engage in this criminal litigation and about six years have passed even then the respondent has not received the amount for which he had rightful claim. Therefore, the compensation ordered to the tune of Rs.3,00,000/- is only in excess to the tune of Rs.49,600/- which can be regarded as proper compensation, although it could have been assessed on the higher side also, which the appellate Court has refrained. Therefore, in no manner it can be said that the amount of compensation that has been ordered to be paid by the applicant is excessive. Therefore, after over all consideration on the facts and circumstances of this case, I am of this view that this criminal revision is without any substance which is dismissed at the motion stage.

6. The petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge