

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No.424 of 2019**

Sandeep Gupta, son of Purshottam Gupta, 42 years, through Proprietor Sandeep Stationary Mart & Book Depo Dev Shri Talikes Road, Dhamtari, Tehsil Dhamtari, District Dhamtari, Chhattisgarh, resident of Ramsagar Para Ward, Dhamtari, District Dhamtari, Chhattisgarh

----- **Petitioner**

Versus

Dinesh Kumar Sahu, aged about years, son of Late Ramlal Sahu, R/o Ramsagar Para Ward, District Dhamtari, Chhattisgarh

----- **Respondent**

Cr.M.P. No.2511 of 2018

Sandeep Gupta, son of Purshottam Gupta, 42 years, through Proprietor Sandeep Stationary Mart & Book Depo Dev Shri Talikes Road, Dhamtari, Tehsil Dhamtari, District Dhamtari, Chhattisgarh, resident of Ramsagar Para Ward, Dhamtari, District Dhamtari, Chhattisgarh

----- **Petitioner**

Versus

Chittaranjan Das Gajandra, aged about 40 years, Son of Shanker Lal Gajandra, Near Timber Bhawan, Gujrati Colony, Dhamtari, Tahsil & Dist. Dhamtari, Chhattisgarh

----- **Respondent**

And**Cr.M.P. No.423 of 2019**

Sandeep Gupta, son of Purshottam Gupta, 42 years, through Proprietor Sandeep Stationary Mart & Book Depo Dev Shri Talikes Road, Dhamtari, Tehsil Dhamtari, District Dhamtari, Chhattisgarh, resident of Ramsagar Para Ward, Dhamtari, District Dhamtari, Chhattisgarh

----- **Petitioner**

Versus

Dinesh Kumar Sahu, aged about years, son of Late Ramlal Sahu, R/o Ramsagar Para Ward, District Dhamtari, Chhattisgarh

----- **Respondent**

For Applicant : Mr.Kunal Das, Advocate
For Respondents : Mr.Sumit Shrivastava, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

13.02.2020

1. Since common question of law and fact is involved in these petitions under Section 482 of the CrPC, they were clubbed and heard together, and being disposed of by this common order.

2. Facts of Cr.M.P.No.424 of 2019 is taken as lead case:-

2.1 The respondent/complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter called as 'NI Act, 1881) that the petitioner has taken an amount of ₹2,00,000/- from him and he returned by cheque dated 23.3.2015, which has been dishonoured and thereby he committed the offence under Section 138 of the NI Act, 1881.

2.2 During the course of trial, the accused filed an application under Section 91 of the CrPC for production of documents regarding records, agreement, receipt and income tax return of the respondent/complainant, which has been rejected by the Judicial Magistrate First Class, Dhamtari, in Criminal Case No.451/2015, against which, revision was preferred by the petitioner, which was also dismissed by the Additional Sessions Judge, Dhamtari, in Criminal Revision No.52/2018, against which, this petition under Section 482 of the CrPC has been filed.

2.3 In Cr.M.P.No.2511 of 2018, amount is ₹9,37,000/- and in Cr.M.P.No.423 of 2019, amount is ₹6,00,000/-.

3. Mr. Kunal Das, learned counsel for the petitioner, would submit that both the Courts below are absolutely unjustified in rejecting the application by holding that it has been proved by the accused at the time of trial.

4. On the other hand, Mr. Sumit Shrivastava, learned counsel for the respondents, would support the impugned order.

5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

6. It is admitted position on record that the petitioner has issued the cheque of disputed amount, to whom the respondent/complainant has presented before the bank and it has been dishonoured by the bank.

7. The Supreme Court in the matter of **Bir Singh v. Mukesh Kumar**¹ relying upon Section 139 of the NI Act, 1881 raises presumption of law that cheque duly drawn was in discharge of debt or liability. However, presumption is rebuttable and onus lies on drawer to

1 (2019) 4 SCC 197

rebut it by adducing cogent evidence to the contrary.

It was held as under:-

"32. The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post-dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.

33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence."

8. Admittedly, the trial is at the stage of complainant's evidence and it is pending for the evidence of the complainant, whether in that stage, application under Section 91 of the CrPC for production of documents filed by accused/petitioner can be entertained by the

trial Court.

9. Section 91 of the CrPC provides as under: -

"91. Summons to produce document or other thing.—(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed—

(a) to affect, sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority."

10. A careful perusal of the aforesaid provision would show that the power to issue a summons for the production of a document or a thing is to be exercised whenever the Court considers that its production is

necessary or desirable for the purposes of investigation, inquiry, trial or other proceeding. In other words, the power is available to the Court at every stage of proceedings contemplated under the Code. It has to be noticed that this power is available not only to the Court but also to any officer-in-charge of a police station and the only condition for the exercise of the power is that the production of the document or the thing should be necessary or desirable for purposes of the proceedings and the only restriction is that contained under subsection (3) which provides that the provisions of the Section shall not affect Sections 123 and 124 of the Indian Evidence Act or apply to articles in the custody of the Postal or Telegraph authorities.

- 11.** The Supreme Court has an occasion to consider the scope and ambit of Section 91 of the CrPC in a three-Bench judgment in **State of Orissa v. Debendra Nath Padhi**² in which Their Lordships of the Supreme Court have held that Section 91 of the CrPC does not confer right on the accused to seek production of document to prove his defence at the stage of framing the charge and observed as under: -

“25. Any document or other thing

² (2005) 1 SCC 568

envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the Court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227 what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by Court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof."

12. Their Lordships further considered the matter with reference to its earlier decision in the matter of Om Parkash Sharma v. CBI³ and held as under: -

"28. We are of the view that jurisdiction under Section 91 of the Code when invoked by accused, the necessity and desirability would have to be seen by the court in the context of the purpose - investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry."

13. The principle of law laid down in Debendra Nath Padhi's case (supra) was followed with approval by their Lordships in the matter of V.L.S. Finance Limited v. S.P. Gupta and another⁴. Their Lordships agreed with the proposition of law laid down in Debendra Nath Padhi's case (supra). (See paragraph 49 of that report.)

14. Very recently, in Nitya Dharmananda alias K. Lenin and another v. Gopal Sheelum Reddy also known as Nithya Bhaktananda and another⁵, Their Lordships followed the principle of law laid down in Debendra Nath Padhi's case (supra) and held that defence has no right to invoke Section 91 of the CrPC de hors the satisfaction of the Court, at the stage of charge and observed as under: -

3(2000) 5 SCC 679

4(2016) 3 SCC 736

5 (2018) 2 SCC 93

"8. Thus, it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge-sheet for dealing with the issue of charge but if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/ prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge-sheet. It does not mean that the defence has a right to invoke Section 91 CrPC de hors the satisfaction of the court, at the stage of charge."

15. Reverting to the facts of the present case in the light of principle of law laid down by the Supreme Court in the above-stated judgments (supra), it is quite vivid that the trial is at initial stage and the complainant's evidence has not commenced, therefore, the trial Court is absolutely justified in rejecting the application under Section 91 of the CrPC and the revisional Court is also justified in dismissing the revision filed by the petitioner.

16. I do not find any merit in these petitions. Accordingly, these petitions under Section 482 of the CrPC are dismissed. However, the petitioner is at liberty to move an application at appropriate stage, if any.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-