

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1228 of 2021

Pappu Vijay Kumar S/o R.P. Annaji Rao Aged About 48 Years R/o
H.No. C - 48, Nature City, Phase - 2, Sakti, Tehsil and District
Bilaspur Chhattisgarh. **---- Petitioner**

Versus

1. State of Chhattisgarh through its Secretary, Ministry of Law,
Mantralay, New Raipur, District : Raipur, Chhattisgarh
2. Punjab National Bank Branch Vayapar Vihar, Near Lakme Beauty
Parlor, Link Road, Bilaspur, C.G. 495001 through its Branch
Manager., District : Bilaspur, Chhattisgarh
3. Debt Recovery Tribunal Through its Registrar 797-2, Shanty Kunj,
South Civil Lines, Jabalpur - 482001, District : Jabalpur, Madhya
Pradesh
4. Union of India Through Its Secretary, Ministry of Finance, New Delhi.,
District : New Delhi, Delhi **--- Respondents**

For the applicant	: Mr. Vijay Kumar Sahu, Advocate
For the State	: Mr. Gagan Tiwari, Dy. Govt. Advocate
For respondent No.2	: Mr. Sachin Singh Rajput, Advocate
for respondent No.4	: Mr. Tushar Diwan, Advocate, on behalf of Mr. Ramakant Mishra, Asst. S.G.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

02.03.2021

1. In this writ petition filed under Article 226 of the Constitution
of India, the petitioner has prayed for issuance of a direction
or order in the nature of mandamus to quash the
proceedings initiated by respondent No.2 Bank under section
138 of the Negotiable Instruments Act.
2. Learned counsel for the petitioner would submit that on the
basis of fraud committed , certain loan transaction were
availed in the name of petitioner. Thereafter for the alleged

default, the petition was filed by respondent no.2 before the DRT. At the same time, a remedy of proceeding u/s 138 of N.I.Act is being availed by the Bank, therefore, there cannot be two proceeding for recovery of loan amount. He would further submit that the proceedings u/s 138 is based on the alleged bounce of the cheque, therefore, eventually it would lead to the recovery.

3. Per contra, learned counsel for respondent Bank would submit that the petitioner has not made it clear as to whether appearance by him is made before the Court wherein the petition u/s 138 of N.I. Act is pending. He further submits that the defence raised by the petitioner can be considered before the Criminal court and there cannot be an order for roving enquiry by this Court. He refers to **(2019) 3 SCC 620** and would submit that the doctrine of election cannot be applied as the criminal case and recovery proceedings are on different footing.
4. A perusal of the documents shows that a proceeding before the DRT has been commenced by the Bank vide Annexure P-10. The petitioner alleged that on the same facts, the recovery proceeding for dishonour of cheque has been commenced by the Bank, which also pertains to recovery. The Supreme Court in **(2019) 3 SCC 620** while applying the analogy has held that the doctrine of election would not be applicable in the cases of like nature. Further more, the supreme Court in **(2020) 4 SCC 440** has held that recovery under SARFAESI Act is a complete Code and any proceeding filed before it can be dealt with by DRT. Here before this Court it is not clear as to whether the petitioner has made appearance in the criminal complaint which is pending

wherein it is alleged that cheque issued by the petitioner was bounced. Annexure P-9 would show that it is a status report u/s 138 of N.I. Act and it is only for appearance of the accused petitioner. It is for the petitioner to explain for what amount and for which reason, the cheques were issued by him. The defence of the petitioner that the loan was availed on the basis of forged document cannot be accepted and no order for roving enquiry can be passed by this Court. Since it is submitted by the petitioner that criminal complaint has already been made about the forged documentation, it will have its logical end. At this stage, no finding can be given that for recovery of amount, the cheques were given and for the same reason, proceedings are pending before the DRT. It is a finding of fact to be arrived at. Therefore, at this stage, I am not inclined to allow this petition. Accordingly it is dismissed.

Sd/-

**GOUTAM BHADURI
JUDGE**