

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 228 of 2020

Saurabh Agrawal S/o Shri Suresh Kumar Agrawal, Aged About 30 Years
R/o Ward No. 02, Near Bavali Kuaa, Tehsil And District - Raigarh
Chhattisgarh. (Father Name is wrongly Mentioned in Annexure - P/1).

---- Petitioner/ Accused

Versus

IndusInd Bank Limited, Branch - Raigarh (C.G.), through its Branch
Manager And Power Of Attorney Holder, Arjun Singh Chouhan S/o Shri
Ashok Singh, Aged About - 29 Years, R/o IndusInd Bank Limited, Office
- Shop No. 53 - 54, First Floor, Krishna Complex Infront Of Ganga
Nursing Home, Raigarh, Tehsil And District - Raigarh Chhattisgarh.

---- Respondent/ (Complainant)

For Petitioner	: Shri Surfaraj Khan, Advocate.
For the Respondent	: Shri Ashish Surana, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

4-2-2021

Heard.

1. This petition under Article 227 of the Constitution of India has been brought by the petitioner being aggrieved by the order dated 24.1.2020 passed by the Learned Additional Sessions Judge, Raigarh and the order dated 6.1.2020 passed by the Judicial Magistrate First Class, Raigarh.
2. The respondent has filed a complaint under Section 138 of Negotiable Instruments Act which has been registered against the petitioner. After giving appearance, the petitioner filed an application under Section 91 of the Cr.P.C. and another application under Section 263(g) read with Section 251 of the Cr.P.C. Both the applications were dismissed by the learned Magistrate and the revision preferred before the Learned Additional Sessions Judge has been dismissed by the impugned order.

3. It is submitted by counsel for the petitioner that the petitioner made a prayer for production and supply of the documents regarding loan agreement, loan sanction, loan account statement etc. and for the purpose of his defence under Section 91 of the Cr.PC. A separate application was filed under Sections 263(g) and 251 of the Cr.P.C., on this basis, that the complaint under Section 138 of the Negotiable Instruments Act is not maintainable. As there is non-compliance of Sections 118(g) and 138(c) of the NI Act and also that the service of notice on the petitioner was not proper.
4. It is further submitted that in the case of **A.C. Narayanan vs. State of Maharashtra and Anr.** reported in **2015 (12) SCC 203**, it has been held that the Power of Attorney holder can depose and verify on oath before the Court in order to prove the contents of the complaint. However, the power of attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transactions. In that case, the Magistrate has taken cognizance of the offence without *prima facie* finding as to whether there exists any power of attorney and the present complaint has also been filed accordingly. Hence, it was not maintainable.
5. Learned counsel for the respondent opposes the submissions and submits that the application filed by the petitioner has been rightly rejected by the trial Court as well as by the Revisional Court. It is submitted that the application that has been filed under Section 91 of the Cr.P.C. at the stage when the Court has to read out the substance of accusation to the accused person therefore, it was not maintainable. It is further submitted that in the case of **M.M.T.C. Ltd and Another vs. MEDCHL Chemicals and Pharma (P) Ltd. And Another**, reported in **(2002) 1 SCC 234**, it was held by the Supreme Court that the complaint

filed on behalf of the Company by its employee without necessary authorization, such a complaint is maintainable and the absence of authorization can be rectified even at a subsequent stage. It is submitted that in the case of **Sandeep Gupta vs. Dinesh Kumar Sahu** in **Cr.M.P. No. 424 of 2019** and batch of other Cr.M.P.s, decided on 13.2.2020, the Co-ordinate Bench of this Court, has observed that the application under Section 91 of the Cr.P.C. shall not be maintainable. Further, reliance has been placed on the judgment of Supreme Court in the case of **State of Orissa vs. Debendra Nath Padhi**, reported in **(2003) 2 SCC 711**, in which the Full Bench of the Supreme Court has very clearly held that the accused cannot invoke Section 91 of the Cr.P.C. seeking production of documents at any preliminary stage and such a right is available to the accused only at the defence stage, therefore, there is no case present in this petition which may be dismissed.

6. In reply, it is submitted by counsel for the petitioner that on plain reading of Section 91 of the Cr.P.C. it would be seen that there is no stage provided for invoking the powers of a Court under Section 91 of the Cr.P.C. The complaint has been filed by the employee of the respondent but there is no explanation of his capacity in the complaint, therefore, there is a question on the existence of power of attorney regarding which it is necessary that the document should be called.
7. Considered the submissions. The stage at which the application has been filed by the petitioner, is the stage when the substance of accusation is to be read out against him. The procedure under Section 138 of the Negotiable Instruments Act is summons procedure, therefore, there is no stage of framing charge. The summons trial commences after the substance of accusation are read out and the warrant trial or

Sessions trial commences after the charges are framed.

8. Section 91 of the Cr.P.C. provides that the power in this provision can be invoked during any investigation, enquiry or trial. The stage in which the application under Section 91 of the Cr.P.C. was filed, the trial had not commenced, further, the enquiry whatever necessary was already completed. It being a complaint case, there was no necessity of any investigation. Hence, the stage for filing an application under Section 91 of the Cr.P.C. had not come. Further, the ratio that had been laid down by the Full Bench of the Supreme Court in the case of **State of Orissa vs. Debendra Nath Padhi** (supra) is applicable and has force. According to which, the petitioner who is accused in this case cannot pray the Court to invoke this power under Section 91 of the Cr.P.C. before he enters at the stage of defence. Hence, there appears to be no error committed by the trial Court and the Revisional Court in passing the orders of dismissal on this point.
9. As regards, the order on the other application, that application appears to be frivolous. The grounds raised in that application are totally the grounds of defence which are of use of the petitioner at the stage when the trial proceeds.
10. As regards, the authority of the person filing complaint is concerned there is a clear view of the Supreme Court in the case of **M.M.T.C. Ltd and Another vs. MEDCHL Chemicals and Pharma (P) Ltd. And Another** (supra).
11. Section 142 of the NI Act provides that “no court shall take cognizance of any offence punishable under Section 138 of the NI Act except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque”.

12. The holder in due course has been defined under Section 9 of the NI Act, 1881, which means the possessor of any cheque, therefore, the requirement for taking cognizance under Section 142 of the NI Act, 1881 on a complaint made by a person appears to be quite relaxed according to the wide meaning given as to who shall be the complainant of the case. In **M.M.T.C. Ltd and Another vs. MEDCHL Chemicals and Pharma (P) Ltd. And Another** (supra), the Supreme Court has further held that one of the authorization can be rectified even at a subsequent stage, therefore, the objection raised by the petitioner's side on this point was not made at the proper stage. Hence, the impugned order and the order of the Magistrate did not suffer from any infirmity with respect to the orders passed on both the applications filed by the petitioner, therefore, there appears to be no substance present in this petition which is dismissed at motion stage.

Sd/-
(Rajendra Chandra Singh Samant)
Judge