

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 591 of 2021**

Smt. Shakuntala Singh Vishwakarma, W/o. Laxmi Prasad Vishwakarma, aged about 47 years, R/o. Sonkar Badi, Near Yogesh Jewellers, Kushalpur, Tehsil & Distt: Raipur (C.G.)

---- Petitioner**Versus**

Laxmi Prasad Vishwakarma, S/o Manuram Vishwakarma, aged about 60 years, Occupation : Steno typist, R/o. Aman Nagar, Behind Ashoka Heights, P.S. Mowa, Raipur, Tehsil & Distt: Raipur (C.G.)

---- Respondent**Cr.M.P. No. 595 of 2021**

Smt. Shakuntala Singh Vishwakarma, W/o. Laxmi Prasad Vishwakarma, aged about 47 years, R/o. Sonkar Badi, Near Yogesh Jewellers, Kushalpur, Tehsil & Distt: Raipur (C.G.)

---- Petitioner**Versus**

Laxmi Prasad Vishwakarma, aged about 62 years, R/o. Aman Nagar, Behind Ashoka Heights, Mowa, P.S. Mowa, Raipur, Tehsil & Distt: Raipur (C.G.)

---- Respondent**Cr.M.P. No. 603 of 2021**

Smt. Shakuntala Singh Vishwakarma, W/o. Laxmi Prasad Vishwakarma, aged about 47 years, R/o. Sonkar Badi, Near Yogesh Jewellers, Kushalpur, Tehsil & Distt: Raipur (C.G.)

---- Petitioner**Versus**

Laxmi Prasad Vishwakarma, S/o Manuram Vishwakarma, aged about 60 years, Occupation : Steno typist, R/o. Aman Nagar, Behind Ashoka Heights, P.S. Mowa, Raipur, Tehsil & Distt: Raipur (C.G.)

---- Respondent

For Petitioner	: Mr. Vipin Punjabi, Advocate.
For Respondent	: Mr. R.K. Kesharwani, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

11.08.2021

1. Since common question of law & facts are involved in all the petitions under Section 482 of the Cr.P.C, therefore, they are heard together analogously and are being disposed of by this common order. [For deciding these CrMPs, facts of Cr.M.P No. 591/2021 is being considered]

2. As per the averments made in the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (henceforth "NI Act"), the petitioner/complainant would submit that petitioner and respondent/accused are wife & husband, respectively and on account of some family dispute, mutual agreement was executed between them on 27.06.2017 (Annexure P-2). According to which, it has been agreed between them that they were mutually left to each other and there will be no matrimonial relation between them accordingly the respondent/accused was agreed to pay an amount of Rs. 23,00,000/- to the petitioner through following cheques in favour of the petitioner payable at State Bank of India, Branch, New Shanti Nagar, Raipur (C.G.). The details of CRMP, cheque numbers, date of issuance of cheques, amount & bank account number are given below in under table form as under :-

Cheque No.	Date of issuance of cheque	Amount	Bank number	Account

839149	25.11.2018	Rs.5,00,000/-	30305230549
839150	25.12.2018	Rs.5,00,000/-	30305230549
839148	20.12.2018	Rs.5,00,000/-	30305230549

3. Petitioner - Smt. Shakuntala Singh Vishwakarma has presented the aforesaid cheques on 28.12.2018, for clearance in Punjab National Bank, Main Branch, Raipur wherein the petitioner is maintaining the said account. The said cheques were dishonoured and the same were returned to the petitioner with an endorsement that the cheques are dishonoured on the ground that “**payment stopped by drawer**”. The petitioner, on being informed by the Bank vide Memo dated 31.12.2018, sent a statutory/legal notice through registered post on 07.01.2019 to respondent/accused, demanding the aforesaid amounts, which could not be served upon respondent/accused with an endorsement that addressee was absent at the time of distribution of mail.

4. On account of non-service of such notice upon respondent/accused due to his absence at the time of distribution of registered post letter, the petitioner filed complaint case under Section 138 of the NI Act along with affidavit under Section 145 of the NI Act before the Judicial Magistrate, First Class, Raipur, which has not been positively proceeded for its expeditious decision and on may occasions of hearing, counsel for respondent has sought adjournment only for delaying the disposal of such complaint. Certified copy of complaint case No. 929/2019 from the date of 01.02.2019 to 05.02.2021 pending before the JMFC, Raipur shows that learned trial Court has easily granted the adjournments on making the prayer by counsel for the respondent/accused. These orders are being challenged by the

petitioner by way of filing these petitions under Section 482 of the Cr.P.C.

5. This court has issued notice to the respondent and pursuance of the notice Mr. Rajesh Keshewani, Advocate has entered into appearance on behalf of the respondent/accused.

6. Counsel for the petitioner by filing the three petition would submit that learned Judicial Magistrate First Class, Raipur may kindly be directed to consider & decide the case expeditiously preferably within a period of six months from the date of receipt of certified copy of this order.

7. On the other hand, learned counsel for the respondent, while opposing the submission made by the counsel for the petitioner would submit that the case may be decided according to the convenience of the trial and no direction can be issued for early disposal of the aforesaid complaint cases.

8. I have heard learned counsel for the parties and perused the record appended to the petitions.

9. Hon'ble Supreme Court in Suo Motu ***Writ Petition (Crl.) No. 2 of 2020*** has considered the steps to be taken for expeditious trial of cases under Section 138 of the NI Act, 1881 and Hon'ble the Supreme Court vide its order dated 16.04.2021 has issued following direction/s, which are extracted below:-

“24. The upshot of the above discussion leads us to the following conclusions:

1) The High Courts are requested to issue practice directions to the Magistrate to record reasons before converting trial of complaints under Section 138 of the Act summary trial to summons trial.

2) Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.

3) For the conduct of inquiry under Section 202 of the Code, evidence of witness on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.

4) We recommend that suitable amendments be made to the Act for provision of one trial against a person for multiple offences under Section 138 of the Act committed within a period of 12 months, notwithstanding the restriction in Section 219 of the Code.

5) The High Courts are requested to issue practice directions to the Trial Courts to treat service of summons in one complaint under Section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonour of cheques issued as part of the said transaction.

6) Judgments of this Court in Adalat Prasad v. Rooplal Jindal and others¹ and Subramaniam Sethuraman v. State of Maharashtra & Anr.² have interpreted the law correctly and we reiterate that there is no inherent power of Trial Courts to review or recall the issue of summons. This does not affect the power of the Trial Court under Section 322 of the Code to revisit the order of issue of process in case it is brought to the court's notice that it lacks jurisdiction to try the complaint.

7) Section 258 of the Code is not applicable to complaints under Section 138 of the Act and findings to the contrary in Meters and Instruments Private Limited and Another v. Kanchan Mehta³ do not lay down correct law. To conclusively deal with this aspect, amendment to the Act empowering the Trial Courts to reconsider/recall summons in respect of complaints under Section 138 shall be considered by the Committee constituted by an order of this Court dated 10.03.2021.

8) All other points, which have been raised by the Amici Curiae in their preliminary report and written submissions and not considered herein, shall be the subject matter of deliberation by the aforementioned Committee. Any other issue relating to expeditious disposal of complaints under Section 138 of the Act shall also be considered by the Committee."

10. In compliance of order of Hon'ble the Supreme Court, the High

¹ (2004) 7 SCC 338

² (2004) 13 SCC 324

³ (2018) 1 SCC 560

Court of Chhattisgarh has issued Practice Directions on 02.07.2021, therefore, the trial Court is directed to follow the Practice Direction issued by this Court taking into consideration the facts of this case.

11. In view of the direction of the Hon'ble Supreme Court, this court is of the view that the cases arising out of the offence under the NI Act should have been decided as early as possible to achieve the very object of the NI Act. Accordingly, it is directed the Judicial Magistrate First Class should make all the endeavour to complete the trial within a outer limit of one year from the first date of appearance of the parties.

12. The parties are directed to appear before the judicial Magistrate First Class, Raipur on 25.09.2021 and thereafter within outer limit of one year the trial Court shall make all the endeavour to conclude the trial.

13. With this observations & directions, the present CRMPs stand finally disposed off.

Sd/-
(Narendra Kumar Vyas)
Judge

Amita