

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 444 of 2015

Dr. R. K. Verma S/o Ram Abhilakh Verma Aged About 45 Years R/o Kailash Nagar Bhilai, P.S. Jamul, Tahsil And District Durg, Chhattisgarh.

---- Applicant

Versus

Shivnath S/o Jagdev Prasad Aged About 69 Years R/o Quarter No.9, D.Cross Street No.4, Sector-5, P.S. Sector-6 Bhilai, District Durg, Chhattisgarh.

---- Respondent

For Applicant	: Shri Uttam Pandey, Advocate.
For Respondent	: Shri B.P. Singh, Advocate with Shri Shikhar Bakhtiyar, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

9-3-2021

Heard.

1. This criminal revision petition has been brought challenging the legality, propriety and correctness of the judgment dated 24.2.2015 passed in Criminal Appeal No. 196 of 2014, dismissing the appeal filed by the applicant challenging his conviction and sentence by the trial Court in the judgment dated 19.6.2014 in Complaint Case No.2390 of 2011.
2. The respondent filed a complaint under Section 138 of the Negotiable Instruments Act, stating that the applicant had borrowed Rs.1,06,000/- and regarding the repayment of the same he issued cheques dated 30.10.2010 and 30.11.2010. The respondent presented the cheque for payment in the bank which was dishonoured. After service of notice upon the applicant/ accused, no amount was deposited or paid to the respondent, therefore, the complaint was filed within time limit. Learned

trial Court read out the substance of accusation against the applicant, which was pleaded in denial. After completion of trial, the judgment dated 19.6.2014 was passed by the learned Judicial Magistrate First Class, Durg convicting the applicant under Section 138 of the Negotiable Instruments Act sentencing him with simple imprisonment of three months and directing payment of compensation of Rs.1,09,000/- to the respondent. The challenge to this judgment in this appeal has been partly allowed by the Appellate Court in which the sentence of imprisonment as ordered by the trial Court against the applicant was set aside and instead of that, the applicant was sentenced for imprisonment till the rising of the Court. The order of compensation by the trial Court was confirmed in the appellate order.

3. Learned counsel for the applicant submits that the conviction against him by the Courts below was erroneous. The respondent/ complainant has failed to prove that the notice was duly served upon the applicant vide acknowledgement (Ex. P/8). The applicant had contested raising this ground that his signature on Ex. P/8 was forged. It is further submitted that the applicant be granted further opportunity to prove that the signature on Ex.P/8 was forged signature and for that the case may be remanded to the trial Court.
4. Learned counsel appearing for the respondent/ State opposes the submissions so made and submits, that no error has been committed by the Appellate Court and the trial Court in convicting the applicant under Section 138 of the Negotiable Instruments Act, 1881. The applicant had sufficient opportunity to raise the ground before this Court. It is further submitted that the revision filed is not bonafide. Reliance has been placed on the judgments of the Supreme Court in the case of **Bir Singh vs. Mukesh Kumar**, reported in **(2019) 4 SCC 197** and **Rajeshbhai**

Muljibhai Patel and Others vs. State of Gujarat and Another, reported in **(2020) 3 SCC 794**, it is submitted that the revision petition be dismissed.

5. In reply, it is submitted by counsel for the applicant that the applicant had been pursuing his ground of defence that he had provided three blank cheques to one Lalchand Yadav as a security for loan, which was never returned to him and this defence has been proved by him, hence, the conviction against him is bad in law.
6. Considered the submissions. Perused the evidence present in Complaint Case No. 2390 of 2011. The respondent has proved the acknowledgement (Ex. P/8). Adverse suggestion given to him in cross-examination had been denied and he has made a statement that he recognizes the signature of the applicant and it is the signature of the applicant on Ex.P/8, therefore, his statement regarding service of notice upon the applicant has remained intact. The applicant had in his defence examined himself and stated that Ex.P/8 does not bear his signature. In cross-examination he had admitted that he has not made any complaint against the respondent.
7. The defence of the applicant was examined by the trial Court and by the Appellate Court and both the Courts have rejected the version of the applicant. It is, therefore, clear that the applicant had been pursuing his defence on this ground that he was not recipient of the notice (Ex.P/8) from the very beginning before the trial Court and during the pendency of the trial. The applicant never made any special effort to prove his stand by producing any other witness or any expert for the purpose of disproving his signature on Ex.P/8, therefore, this ground is no longer available to the applicant to be raised again in this revision petition. After consideration on all the facts and circumstances present in this

case, I am of this view that this revision petition is without any substance, which is liable to be dismissed.

8. Accordingly, the revision petition is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Nimmi