

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 756 of 2017

- Shilpa D/o Basant Kumar Soni, Aged About 31 Years R/o I L C - 268, Deendayal Campus Junwani, Bhilai, District Durg Chhattisgarh

---- Petitioner

Versus

- Mithlesh S/o Suresh Chand Jain, Aged About 31 Years R/o Kailash Nagar, House No. 128, Ward No. 29 Infront Of Jala Ram Mandir, Rajnandgaon District Rajnandgaon Chhattisgarh

---- Respondent

For Petitioner : Shri Jitendra Gupta, Advocate

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

03.08.2021

1. The present petition under Section 482 of the Cr.P.C. has been filed against the order passed by the Revisional Court i.e. Additional Sessions Judge, Rajnandgaon in Criminal Revision No. 32/2016 (Mithlesh vs Shilpa) mainly contending that the learned Second Additional Sessions Judge, Rajnandgaon vide its order dated 19.05.2017 has allowed the revision filed by the respondent against the order dated 03.03.2016 passed by learned Judicial Magistrate First Class, Rajnandgaon by which complaint filed by the respondent has been dismissed before registration. The Revisional Court has restored the criminal complaint filed by respondent under Section 138 of the Negotiable Instrument Act, 1881.
2. This Court has issued notice to the respondent for appearance and copy of the notice was received by the respondent, despite this, no one represent the respondent.
3. The petitioner has remedy of filing of revision under Section 401 of Cr.P.C. therefore, present CRMP under Section 482 of Cr.P.C. is not maintainable.

4. It is pertinent to mention here that as per Section 401 Cr.P.C., the High Court is also exercising power of revision, as such, the present CRMP under Section 482 Cr.P.C. is not maintainable. Section 401 Cr.P.C. for ready reference is extracted below:-

“401. High Court's powers of revisions-

(1) In the case of any proceeding the record of which has been called for by itself or Which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice.”

5. In view of the above legal provisions, the CRMP is not maintainable, accordingly, it is disposed of. However, petitioner is granted a liberty to file duly constituted revision petition as per Section 401 Cr.P.C. before the High Court.
6. With the aforesaid observations, the present Cr.M.P. is finally disposed off.
7. The certified copy of the order filed by the petitioner be returned to the counsel for the petitioner on furnishing self attested photocopy of the same. The records of the Revisional Court and trial Court be sent back forthwith as trial is pending since 2016.

The learned trial Court is directed to decide the complaint filed by the respondent within one year from the date of appearance of the parties.

**Sd-
(Narendra Kumar Vyas)
Judge**

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