

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1188 of 2021**

Mangilal Rathi S/o Prayagdas Rathi, Aged About 54 Years, R/o Village Bharda, Tehsil Gurur District Balod Chhattisgarh.

---- Petitioner**Versus**

Somit Kumar Sahu S/o Bhop Sahu, Aged About 52 Years, R/o Quarter No. 166B, Township Dallirajahra, PS Dallirajahra, Tehsil Daundi, District Balod Chhattisgarh.

---- Respondent

For Petitioner : Shri Priyank Rathi, Advocate

Hon'ble Shri Parth Prateem Sahu, Judge**Order on Board****10.11.2021**

1. Challenge in this petition is to the order dated 20/09/2021 passed by First Additional Sessions Judge, Balod District Balod (C.G.) in Criminal Revision No.6 of 2021 whereby learned revisional Court upheld the order passed by Judicial Magistrate First Class, Dallirajahra, District Balod (C.G.) in Criminal Case No.57 of 2019 whereby application filed by petitioner under Section 45 of the Indian Evidence Act, 1872 (in short 'Act of 1872') came to be dismissed.
2. Facts relevant for disposal of this petition, are that, respondent has filed an application under Sections 200 & 138 of the Negotiable Instruments Act, 1881 (in short 'Act of 1881') pleading therein that petitioner has issued cheque bearing No.000039 of Rs.10,50,000/- dated 20.12.2018. When cheque was put for its

clearance in the bank, it was dishonored. Notice as provided under Section 18 of the Act of 1881 was issued and when the amount mentioned in cheque was not paid to respondent, he filed complaint case for commission of offence under Section 138 of Act of 1881. Notice was issued to the petitioner. After his appearance, witnesses of complainant were examined. After examination of complainant witnesses, petitioner filed an application under Section 45 of the Act of 1872 making prayer that the documents (Exhibits D/1 to D/4) placed on record by the petitioner/non-applicant to be sent to handwriting expert for expert opinion. The application came to be rejected by trial Court. The order passed by trial Court rejecting application under Section 45 of the Act of 1872 was put to challenge before First Additional Sessions Judge, Balod District Balod (C.G.), which also came to be dismissed by impugned order.

3. Shri Priyank Rathi, learned counsel for petitioner would submit that petitioner while replying to legal notice issued by an Advocate under the provisions of Act of 1881, has categorically replied that cheque (subject matter of case) was misplaced and written information was given to Bank of Baroda, Branch Gurur, District Balod (C.G.) and subsequently, realizing that it can be misused, further complaint was lodged before concerned Police Station on 16.01.2019. During pendency of the complaint case under Section 138 of the Act of 1881., immediately after examination of the complainant witnesses, petitioner moved an application under Section 45 of the Act of 1872, by getting the document Exhibits P/1, P/2, P/3 and P/4 to handwriting expert for

opinion. The prayer for sending the documents made in application was amended and the document D/1 to D/4 were sought to be examined by the expert. Trial Court has not considered the grounds raised by petitioner in the application in proper manner and dismissed the application. Order of Magistrate was challenged in revision which also came to be dismissed. He referred to reply to show-cause-notice (Annexure P/6) as well as application submitted before the Bank (Annexure P/7) in support of his contention. It is contended that vide Annexure P/8, balance amount as mentioned in the slips (Exhibits D/1 to D/4) shows balance amount of Rs.14,500/- only in the month of March 2014, hence also, there was no occasion for handing over the cheque of huge amount of Rs.10,50,000/- to complainant/respondent, hence the application filed under Section 45 of the Act of 1872, be allowed in the interest of justice.

4. I have heard the learned counsel for the petitioner and perused the pleadings as well as documents placed on record.
5. To appreciate the submission of learned counsel for petitioner that cheque was misplaced in the year 2017 much prior to the alleged date of issuance of cheque and same was intimated to the Bank vide Annexure P/7, I have perused Annexure P/7, which is a copy of the application, perusal of which does not reflect that in the application, there is mention of the fact that cheque numbers mentioned therein i.e. of two cheques which has been stated by respondent to have been issued in his favour by the petitioner is misplaced, but what is appearing from the application is for the request of stop payment. No reason is appearing to

have assigned in the application for stopping the payment. Further, documents as placed on record vide Annexure P/8 by petitioner himself before the trial Court (sought to be examined by expert) and making submission that in the month of March, 2014, there is balance of Rs.14,500/- only does not appear to be correct on the face of document because contents of document would show that said amount is balance of interest amount as on March 2014 and principal amount is separately mentioned in left hand corner i.e. entry of Rs.4,50,000/- twice. The documents (Exhibits D/1 to D/4) which the petitioner wants to sent for handwriting expert was in possession of petitioner himself since beginning. Signature on the cheque is not in dispute and was not sought to be examined by expert.

6. Considering the entirety of facts and circumstances of the case and reasoning assigned by learned revisional Court for dismissing the criminal revision relying upon judgments passed in **Sunita Dubey v. Hukum Singh Ahirwar** reported in **2015 (1) M.P.L.J., 574**, **Satyendra Upadhyaya v. Omprakash Rathore @ Japan Singh** reported in **2010 (5) M.P.H.T., 104**, **Narendra Dhakad v. Anand Kumar** reported in **I.L.R.-2008 M.P., 1309**, and **Iqrar Ahmed v. Mohammed Sadiq** reported in **I.L.R. [2015] M.P., 511**, I do not find any error in impugned order. The petition being devoid of substance, is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge