

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 828 of 2021

1. Chandrabhan Sahu S/o Shankarlal Sahu, Aged About 42 Years, R/o Village Deradih, Tahsil Kasdol, District Balodabazar-Bhatapara (C.G.).

---- Applicant

Versus

1. Heeralal Agrawal S/o Madanlal Agrawal, Aged About 46 Years, Proprietor Agrawal Fly Ash Bricks Koliha, R/o Village Munda, Tahsil Balodabazar, District Balodabazar-Bhatapara (C.G.).

---- Respondent

For Applicant : Mr. Govind Ram Miri, Sr. Counsel with
Mr. Basant Kaiwartya, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order on Board

17/11/2021

- 1) Heard on admission.
- 2) By the judgment dated 04/03/2021 passed by the Chief Judicial Magistrate, Balodabazar in Negotiable Case No. 62/2019, the applicant/accused was convicted under Section 138 of the Negotiable Instrument Act and sentenced to undergo R.I. for 1 year and pay fine of Rs. 5,50,000/- as compensation under the provisions of Section 357(3) of Code of Criminal Procedure to the complainant, in default thereof to undergo 6 months S.I.
- 3) By the judgment dated 25/10/2021 passed by the 2nd Additional Sessions Judge Balodabazar, District Balodabazar-Bhatapara (C.G.) in CRA No. 13/2021, the judgment of the Trial Court has been maintained by dismissing the appeal of the accused/applicant.
- 4) In the present revision under Section 309/401 of Code of

Criminal Procedure, the applicant has challenged the judgment dated 25/10/2021.

- 5) Case of the prosecution, in brief, is that the complainant/respondent is engaged in the business of manufacture of Fly Ash Bricks. The applicant being acquainted with the complainant purchased Fly Ash Bricks worth Rs. 5 Lakh from the complainant on credit and executed an agreement on 01/04/2019 to this effect. When the amount of Rs. 5 Lakh was not returned by 31/05/2019 as per the agreement, the complainant deposited the cheque bearing No. 000033 dated 04/06/2019 given by the applicant with the Bank which stood dishonoured due to insufficient balance in the account of the applicant on 06/06/2019. Though the complainant informed about dishonour of the cheque to the applicant over Mobile as also sent a registered legal notice through his Advocate on 27/06/2019, the applicant refused to acknowledge the notice, which led to filing of a complaint case before the Trial Court.
- 6) The Trial Court after due appreciation of the pleadings and the evidence available on record by the judgment dated 04/03/2021 convicted and sentenced the applicant as mentioned above which was subsequently confirmed by the impugned judgment.
- 7) Learned counsel for the applicant submits that both the Courts below have committed illegality and perversity by not appreciating the fact that the applicant had given a blank cheque to the complainant as security only. The complainant has failed to prove its case by leading cogent and reliable evidence and as such no offence under Section 138 of the Negotiable Instrument Act was made out against the applicant. Therefore, the impugned judgment is liable to be set aside and the applicant deserves to be acquitted of the charges leveled against him.
- 8) As per Ex. P-1 i.e. the agreement between the applicant and the complainant, Fly Ash Bricks worth Rs. 5 Lakh was obtained by the applicant on credit from the complainant with an undertaking

that the said amount would be returned to him by 31/05/2019 and he gave a cheque bearing No. 000033 of UCO Bank in favour of the complainant. The Applicant has taken a defence that he had given a blank cheque to the complainant, but the signature of the applicant on the agreement and the cheque has been duly proved. The applicant has admitted before the Trial Court that he has issued a cheque (Ex. P-2) in question to the complainant. As per Ex. P-3 i.e. the memo issued by the Bank, the said cheque got dishonoured due to insufficient amount in the account of the applicant. As per Ex. P-6 i.e. envelop containing the registered notice was refused to be acknowledged by the applicant.

- 9) Thus, considering the overall oral and documentary evidence, the Trial Court was justified in holding the applicant guilty under Section 138 of the Negotiable Instrument Act and sentencing him accordingly. As such the impugned judgment passed by the Court below confirming the judgment of the Trial Court does not suffer from any illegality or perversity calling for any interference by this Court.
- 10) The revision petition being without any substance is liable to be dismissed at the admission stage and is, accordingly, **dismissed**.

-Sd/-
(Gautam Chourdiya)
Judge