

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No. 176 of 2014**

Ramadhar Singh @ R.D.Singh S/o Ramlal Singh Aged About 40 Years M/s. V.R.S. Aqua Gold Ltd. R/o Durgawati College Complex, 2nd Floor, Moudahapaa, Infront of Masjid, Moudahapara, P.S. Moudahapara, Distt. Raipur (C.G.)

---- Appellant

Versus

Smt. Ambika Sahu W/o Chitresh Sahu Aged About 38 Years R/o House No.M/54, Dipika Colony, P.S. Dipika, Tah. Katghora, Civil & Rev. Distt. Korba (C.G.) and on behalf of her Constituted Attorney Shri Chitresh Sahu S/o Mevalal Sahu, aged about 46 years, R/o House No.M/54, Dipika Colony, PS Dipika, Tehsil Katghora, Civil and revenue district Korba (CG).

--- Respondent

For Petitioner	:	Shri B.P. Rao, Advocate.
For Respondent	:	Shri Parag Kotecha, Advocate.

Hon'ble Shri Justice P. Sam Koshy**CAV JUDGMENT****Reserved on 30.09.2016.****Delivered on 27/10/2016.**

1. The present petition under Section 482 CrPC has been preferred by the petitioner seeking for quashment of entire proceeding in Criminal Case No. 887 of 2013 pending before the court of JMFC, Katghora. By way of instant petition, the petitioner has primarily challenged the impugned order dated 27.11.2013 (Annexure P/1) whereby the JMFC, Katghora has rejected the application moved by the petitioner/accused under Section 201 CrPC.
2. Brief facts necessary for adjudication of the case is that, the petitioner/accused in the instant case is said to have issued a cheque in favour of the respondent on 18.03.2008. The said cheque was presented

in the Bank on 16.09.2008, but the cheque was returned by the bank authorities to the respondent-complainant holding that the account does not have sufficient fund. Subsequently, the cheque was again presented on 06.10.2008 and this time also the cheque was returned by the bank authorities holding the same reason of account not having sufficient fund. Legal notice was also issued thereafter and the petitioner had also submitted his reply to the said notice. Since the petitioner did not honour the demand notice for return of amount mentioned in the cheque, the respondent initiated a complaint case against the petitioner/accused under Section 138 of the Negotiable Instruments Act (for short, NI Act).

3. The said complaint case after necessary formalities being undertaken at the time of registration of the complaint. The court below vide order dated 06.12.2009 has registered the case and ordered for issuance of summons for petitioner's presence before the court on 25.06.2010, however, subsequently on 17.08.2010, the petitioner had entered appearance before the court below and has moved an application under Section 201 CrPC.
4. According to the petitioner, the court at Katghora where the complaint case has been filed, does not have jurisdiction to entertain the complaint case as the cheque was given to the complainant at Bilaspur and the cheque also was that of the Axis Bank at Bilaspur. Therefore, the complaint case ought to have been registered at Bilaspur and not at Katghora and as such the court below, for want of jurisdiction, should have rejected the complaint case. It was also contended that as per the commercial transaction and agreement between the parties, the parties

had agreed for conferring the jurisdiction for the legal proceeding in the event of dispute to be that of Delhi Court and on this count also the court below ought to have rejected the complaint case.

5. After considering the said application, the court below vide order impugned dated 27.11.2013 rejected the application under Section 201 CrPC filed by the petitioner holding it to be not tenable in the light of the fact that the court below has already taken cognizance of the complaint case and have invoked the powers conferred upon it under Section 204 CrPC and that since the powers under Section 204 CrPC have already been invoked, application under Section 201 CrPC subsequently filed would not be sustainable before the court below and thus, on the said ground alone the application was rejected leading to filing of this petition under Section 482 CrPC.
6. Counsel for the petitioner has assailed the order passed by the court below on the ground of jurisdiction and also on the ground that no proper service of notice was made upon the petitioner accused by the respondent complainant in accordance with requirement under Section 138 of NI Act.
7. Without entering into the merits of the case, what has to be primarily seen is the application and the provision of law under which the same has been filed. Indisputably, the application which has been considered by the court below is an objection raised by the petitioner in an application under Section 201 CrPC. At this juncture, it would be relevant to take note of the fact that the respondent upon filing complaint case before the court below under Section 200 CrPC, the court below after completing the

formalities took cognizance of the case and have registered the same and had issued notice to the petitioner accused. This issuance of notice by the court below i.e. court of Magistrate was in accordance with the provisions of Section 204 CrPC.

8. Now for ready reference, Section 204(1) CrPC is reproduced as under :

“204. Issue of Process- (1) if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-
 (a) a summons-case, he shall issue his summons for the attendance of the accused, or
 (b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.”

if we look into the provisions of Section 201 CrPC, which again for ready reference is being reproduced as under:

“201. Procedure by Magistrate not competent to take cognizance of the case- If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall,-
 (a) if the complaint is in writing, return it for presentation to the proper court with an endorsement to that effect;
 (b) if the complaint is not in writing, direct the complainant to the proper court.”,

it would clearly reflect that the proceedings under Section 201 CrPC is a stage which has to be exercised by the court below immediately on the complaint case being filed seeking for registration and taking cognizance. In other words, once when the court below has completed the formalities as is required under Section 200 CrPC and orders for issuance of process to the respondent, it would mean that the

stage of consideration of requirement as envisaged under Section 201 CrPC has already been crossed and it has to be presumed that the court below has taken note of the requirement as such and have ordered for issuance of process to the accused persons.

9. Now, the Magistrate having been reached to the stage of issuance of the process to the accused person, in the opinion of this court, the court below has not committed any error in refusing to entertain the application under Section 201 CrPC for the reason that the said stage has already been crossed.
10. Even otherwise, if we look into the merits of the case, there is no dispute in respect of the fact that the respondent is not a resident of Katghora. Further, it is also not in dispute that the cheque which is alleged to have been issued by the petitioner was put for clearance at the Bank of the respondent at Katghora. Another aspect which cannot be brushed aside is non denial on the part of the petitioner of issuance of the cheque bearing his signatures on it to the respondent. The address of the respondent complainant in the complaint case also reflects Katghora.
11. Further, what is also relevant to take note of is the fact that the legal notice which was issued on behalf of the respondent was also from Katghora. Likewise, the petitioner also in the past had issued legal notice to the respondent at her address at Deepika Colony, Gevra Project, Katghora.
12. Thus, in the given factual matrix also, this court does not find any illegality or perversity to have been committed by the court below while rejecting the application under Section 201 CrPC.

13. Accordingly, on both counts, firstly the stage of filing of the application under Section 201 CrPC had also crossed and secondly; on the merits also it cannot be said that the court below has committed any blatant error or it lacks jurisdiction in any manner more particularly for hearing the case under Section 138 of NI Act. Thus, the petition being devoid of merit, the same deserves to be and is accordingly rejected.

Sd/-

(P. Sam Koshy)
JUDGE

inder