

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 16.03.2022****Pronounced on 31.03.2022****CRMP No. 630 of 2021**

1. Avanish Tripathi S/o Lal Bahadur Tripathi Aged About 37 Years (Owner/ Proprietor-Developers) R/o Ganesh Chowk, Nehru Nagar, Nigam Complex, Police Station Civil Line, Bilaspur Chhattisgarh
 2. Aviral Developers Through Proprietor Avanish Tripathi, R/o Ganesh Chowk, Nehru Nagar, Nigam Complex, Police Station Civil Line, Bilaspur Chhattisgarh
- Petitioners**

Versus

Sudama Prasad Shukla S/o Shri Sharda Prasad Shukla Aged About 65 Years
R/o Green Park Colony, Jarhabhatha, Police Station Civil Line, Tahsil And
District Bilaspur Chhattisgarh

---- Respondent

CRMP No. 637 of 2021

1. Avanish Tripathi S/o Lal Bahadur Tripathi Aged About 37 Years (Owner/proprietor-Developers), Address- Ganesh Chowk, Nehru Nagar, Nagar Nigam Complex, Police Station-Civil Line, Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
 2. Aviral Developers Through Proprietor-Avanish Tripathi, Address- Ganesh Chowk, Nehru Nagar, Nagar Nigam Complex, Police Station-Civil Line, Bilaspur, Chhattisgarh.
- Petitioners**

Versus

Sudama Prasad Shukla S/o Shri Sharda Prasad Shukla Aged About 65 Years
R/o Green Park Colony, Jarhabhatha, Police Station-Civil Line, Tahsil And
District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondent**CRMP No. 638 of 2021**

Avanish Tripathi S/o Lal Bahadur Tripathi Aged About 37 Years R/o Gouri Ganesh Colony, Shubham Vihar, Police Station Civil Line, Tahsil And Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Petitioner**Versus**

Sudama Prasad Shukla S/o Shri Sharda Prasad Shukla Aged About 65 Years
R/o Green Park Colony, Jarhabhatha Police Station Civil Line Tahsil And
District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondent**CRMP No. 642 of 2021**

1. Avanish Tripathi Son Of Lal Bahadur Tripathi (Owner / Proprietor-Developers) Aged About 37 Years Address- Ganesh Chowk, Nehru Nagar, Nagar Nigam Complex, Police Station- Civil Line, Bilaspur (Chhattisgarh), District : Bilaspur, Chhattisgarh

2. Aviral Developers Through Proprietor- Avanish Tripathi, Address- Ganesh Chowk, Nehru Nagar, Nagar Nigam Complex, Police Station- Civil Line, Bilaspur (Chhattisgarh) **---- Petitioners**

Versus

Sudama Prasad Shukla Son Of Shri Sharda Prasad Shukla Aged About 65 Years Resident Of Green Park Colony, Jarhabhatha, Police Station - Civil Line, Tahsil And District - Bilaspur (Chhattisgarh), District : Bilaspur, Chhattisgarh

---- Respondent

CRMP No. 643 of 2021

1. Avanish Tripathi S/o Lal Bahadur Tripathi Aged About 37 Years (Owner / Proprietor Developers), Address Ganesh Chowk, Nehru Nagar, Nagar Nigam Complex, Police Station Civil Line Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
2. Aviral Developers Through Proprietor Avanish Tripathi, Address Ganesh Chowk, Nehru Nagar, Nigam Complex, Police Station Civil Line Bilaspur Chhattisgarh. **---- Petitioners**

Versus

Sudama Prasad Shukla S/o Shri Sharda Prasad Shukla Aged About 65 Years R/o Green Park Colony, Jarhabhatha, Police Station Civil Line, Tahsil And District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondent

CRMP No. 646 of 2021

Avanish Tripathi, S/o Lal Bahadur Tripathi, Aged About 37 Years R/o Gouri Ganesh Colony, Shubham Vihar Police Station - Civil Line, Tahsil And Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh **---- Petitioner**

Versus

Sudama Prasad Shukla S/o Shri Sharda Prasad Shukla, Aged About 65 Years R/o Green Park Colony, Jarhabhatha, Police Station - Civil Line, Tahsil And District - Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondent

CRMP No. 647 of 2021

1. Avanish Tripathi S/o Lal Bahadur Tripathi Aged About 37 Years (Owner / Proprietor Developers), Address Ganesh Chowk, Nehru Nagar, Nagar Nigam Complex, Police Station Civil Line Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
2. Aviral Developers Through Proprietor Avanish Tripathi, Address Ganesh Chowk, Nehru Nagar, Nagar Nigam Complex, Police Station Civil Line Bilaspur Chhattisgarh. **---- Petitioners**

Versus

Sudama Prasad Shukla S/o Shri Sharda Prasad Shukla Aged About 65 Years R/o Green Park Colony, Jarhabhatha, Police Station Civil Line, Tahsil And District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondent

CRMP No. 680 of 2021

Avanish Tripathi S/o Lal Bahadur Tripathi Aged About 37 Years R/o Gouri Ganesh Colony, Shubham Vihar, Police Station Civil Line, Tahsil And Bilaspur Chhattisgarh

---- **Petitioner**

Versus

Sudama Prasad Shukla S/o Shri Sharda Prasad Shukla Aged About 65 Years R/o Green Park Colony, Jarhabhatha, Police Station Civil Line, Tahsil And District Bilaspur Chhattisgarh

---- **Respondent**

CRMP No. 682 of 2021

Avanish Tripathi S/o Lal Bahadur Tripathi Aged About 37 Years R/o Gouri Ganesh Colony, Shubham Vihar, Police Station Civil Line, Tahsil And Bilaspur Chhattisgarh

---- **Petitioner**

Versus

Sudama Prasad Shukla S/o Shri Sharda Prasad Shukla Aged About 65 Years R/o Green Park Colony, Jarhabhatha, Police Station Civil Line, Tahsil And District Bilaspur Chhattisgarh

---- **Respondent**

For respective Petitioners:	Shri Kishore Bhaduri, Sr. Advocate along with Shri Rahul Mishra, Advocate.
For Respondent:	Shri Anand Shukla along with Shri Parth Shrivastava, Advocates.

Single Bench: Hon'ble Shri Deepak Kumar Tiwari, J
C A V Order

1. These Petitions have been preferred against the order of cognizance dated 07.12.2015 passed in Complaint Case Nos.13094/2015, 13097/2015, 13349/2015, 13098/2015, 13095/2015, 13348/2015, 13096/2015 and Registration Nos.NIA-717/2015 & 843/2015 respectively and filed under Section 138 of the Negotiable Instruments Act, 1881 (henceforth referred to as 'the NI Act') passed by the JMFC, Bilaspur for quashing the entire proceedings of the same pending before it as not maintainable in view of the judgment pronounced on the similar facts in Civil Suit No.25-B/2016 (Sudama Prashad

vs. Dr. Avinash Tripathi) by the Additional District Judge, Bilaspur on 12.10.2017 whereby, the suit filed by the Respondent/complainant was dismissed.

2. Brief facts of the case are that the complainant is fully acquainted with the Petitioners and due to previous cordial relationship, borrowed some amount and given various cheques detailed as under:-

Sl. No.	Cheque No.	Amount	Date	Bank
1.	828792	5,00,000	01.09.2015	Indsund Bank
2.	828765	5,00,000	15.08.2015	Indsund Bank
3.	317641	6,00,000	15.07.2015	Indsund Bank
4.	828764	4,00,000	15.09.2015	Indsund Bank
5.	110296	6,00,000	25.06.2015	Axis Bank
6.	110295	5,00,000	23.06.2015	Axis Bank
7.	110294	7,00,000	15.06.2015	Axis Bank
8.	110293	9,00,000	15.06.2015	Axis Bank
9.	110292	5,00,000	15.06.2015	Axis Bank
			Total	Rs.52,00,000/-

3. The aforesaid cheques were presented by the complainant for payment but the same got dishonoured due to stop payment, therefore, the complainant sent legal notice and in spite of that, the amount has not been paid, therefore, he filed a complaint. Simultaneously, the complainant/Respondent has also filed Civil Suit bearing No.25-B/2016 on 05.05.2016 for recovery of Rs.62 lacs including the aforesaid cheques.

4. The Petitioners contested the suit and after hearing both the sides, the Additional District Judge, Bilaspur has dismissed the suit by holding that the Petitioners had not borrowed any amount from the complainant and further they have not taken any advance amount from the complainant for sale of the land in question, therefore, as the Petitioners have no legal liability and the

issuance of cheques in question does not arise. The complainant has also raised the said objection before the trial Court, which was dismissed vide order dated 18.01.2019. The said order was challenged in Criminal Revision before the 3rd Additional Sessions Judge, Bilaspur and vide order dated 09.01.2020, the order of JMFC has been confirmed and the Revision Petition was dismissed by holding that criminal complaint case is not found to be barred solely on the ground of pendency of a civil matter before the Civil Court for recovery of money on the same facts and cause.

5. Against the said order, the Petitioners preferred Petitions under Section 482 Cr.P.C, which were registered by this Court as Cr.M.P 547/2020 to 551/2020 and vide order dated 04.03.2020, the Petitioners withdrew the aforesaid Petitions with liberty to file afresh questioning the order taking cognizance.

6. Shri Bhaduri, learned Senior Advocate submits that since the Civil Court has already decided the issue on merits by holding that the Petitioners have no legal liability against the complainant, therefore, the finding arrived at by the Civil Court is binding upon the trial Court in a proceeding filed under Section 138 of the NI Act. Therefore, the entire proceedings of the complaint case under the said Act is an utter abuse of process of law and hence, the same is liable to be quashed. He placed his reliance in the matters of KG Premshanker vs. Inspector of Police and Another, Krishna Janardhan Bhat vs. Dattatraya G. Hegde and Indus Airways Private Limited and Others vs. Magnum Aviation Private Limited and another reported in **(2002) 8 SCC 87**, **(2008) 4 SCC 54** and **(2014) 12 SCC 539** respectively and prays to quash the entire proceedings of complaint case as not maintainable.

7. Learned Counsel for the complainant/Respondent submits that the Petitioners had earlier filed a Petition under Section 482 Cr.P.C by challenging

the order of the Criminal Revision and vide order dated 04.03.2020 in the aforesaid cases, the Petitioners had withdrawn such Petitions seeking liberty to file afresh questioning the order taking cognizance. Therefore, the issue, challenged by the Petitioners attains finality as the civil and criminal proceedings are separate and the Petitioners have only sought remedy to challenge the order of taking cognizance dated 07.12.2015. He further submits that under Section 138 of the NI Act cases, the burden of proving non-existence of debt or liability is on the accused and the same has to be discharged at the time of trial, therefore, prays for dismissal of the Petitions.

8. Heard learned Counsel for the parties at length.

9. Now the seminal point for determination is whether the dismissal of the civil suits for recovery of the cheque amounts and continuation of such criminal proceedings under Section 138 of the NI Act are abuse of process of law and in such case, the entire criminal complaint proceedings are liable to be quashed in the interest of justice by invoking jurisdiction under Section 482 Cr.P.C.

10. In the matter of K.G. Premshanker v. Inspector of Police and another reported in **(2002) 8 SCC 87**, it has been held at paragraph-31 as under:-

“31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by *A* on *B*'s property, *B* filed a suit for declaration of its title and to recover possession from *A* and suit is decreed. Thereafter, in a criminal prosecution by *B* against *A* for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of *B* over the property. In such case, *A* may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require

consideration is — whether judgment, order or decree is relevant, if relevant — its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case.

In this case it was argued that the High Court ought to have dropped the prosecution against the Appellant as the civil court has dismissed the suit for damages filed against the Appellant wherein, it was ordered that the civil proceedings as well as criminal proceedings are required to be decided on the evidence, which may be brought on record by the parties.

11. In the matter of M.M.T.C. Ltd. And another vs. Medchl Chemicals & Pharma (P) Ltd. And another reported in **(2002) 1 Supreme Court Cases 234**, it was held that the complainant need not allege existing of a subsisting debt or liability against which the cheque is issued. The burden of proving non-existence of any debt or liability is on the accused and the same has to be discharged at the time of trial. The relevant paragraphs 15 to 17 of the said decision are as under:-

“15. In the case of [Maruti Udyog Ltd. v. Narender](#) reported in (1999) 1 SCC 113, this Court has held that, by virtue of [Section 139](#) of the Negotiable Instruments Act, the court has to draw a presumption that the holder of the cheque received the cheque for discharge of a debt or liability until the contrary is proved. This Court has held that at the initial stage of the proceedings the High Court was not justified in entertaining and accepting a plea that there was no debt or liability and thereby quashing the complaint.

16. A similar view has been taken by this Court in the case of [K. N. Beena v. Muniyappan and another](#) reported in (2001) 8 SCC 458 : 2001 (7) SCALE 331, wherein again it has been held that under [Section 139](#) of the Negotiable Instruments Act the court has to presume, in a complaint under [Section 138](#), that the cheque had been issued for a debt or liability.

17. There is therefore no requirement that the Complainant must specifically allege in the complaint that there was a subsisting liability. The burden of proving that there was no existing debt or liability was on the respondents. This they have to discharge in the trial. At

this stage, merely on basis of averments in the petitions filed by them the High Court could not have concluded that there was no existing debt or liability.”

12. In the matter of HMT Watches Limited. v. M.A. Abida and another reported in **(2015) 11 SCC 776**, it has been held at paragraph-11 as under:-

“11.....22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of process of court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable.”

13. In the matter of Vishnu Dutt Sharma v. Daya Sapra (Smt) reported in **(2009) 13 SCC 729**, it has been held at paragraphs-28 & 29 as under:—

“28. If judgment of a civil court is not binding on a criminal court, it is incomprehensible that a judgment of a criminal court will be binding on a civil court. We have noticed hereinbefore that Section 43 of the Evidence Act categorically states that judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant in some other provisions of the Act, no other provisions of the Evidence Act or for that matter any other statute had been brought to our notice.

29. Another Constitution Bench of this Court had the occasion to consider the question in Iqbal Singh Marwah v. Meenakshi Marwah [(2005) 4 SCC 370 : 2005 SCC

(Cri) 1101] . Relying on *M.S. Sheriff* [AIR 1954 SC 397] as also various other decisions, it was categorically held:-

“32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given.””

14. In the matter of *M. Krishnan v. Vijay Singh and another* reported in **(2001) 8 SCC 645** , it has been held at para 5 as under:-

5 “.....The proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents. In a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in a criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of.....”

15. In the matter of *Kishan Singh (Dead) through LRs vs. Gurpal Singh and others* reported in **(2010) 8 SCC 775**, it was observed that the findings recorded by Court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject matter is no

more *res Integra* and it was held at paragraph-18 as under:-

“18. Thus, in view of the above, the law on the issue stands crystallised to the effect that the findings of fact recorded by the civil court do not have any bearing so far as the criminal case is concerned and vice versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Evidence Act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration.”

16. Consequently in the light of aforesaid principles and after examining the present matter, it cannot be said that the complaint filed by the Petitioners did not disclose the commission of an offence and merely the dismissal of civil suit by the trial court in such circumstance cannot be made the basis for justifying the interference by the High Court in exercise of the inherent powers for quashing the proceedings. In fact, allegations made in the complaint required adjudication. Therefore, the Petitions are devoid of substance and are liable to be and accordingly dismissed.

Sd/-
(Deepak Kumar Tiwari)
JUDGE