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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA)
ON THE 3rd OF SEPTEMBER, 2022**

MISC. CRIMINAL CASE No. 36579 of 2019

Between:-

**PREM KUMAR S/O SHRI SATYANARAYAN
AGRAWAL OCCUPATION: BUSINESS PROPERTY
MALL, IN FRONT OF DEWAS HOSPITAL , AB
ROAD, DEWAS (MADHYA PRADESH)**

.....PETITIONER

***(SHRI MAKBOOL AHMAD MANSOORI, LEARNED COUNSEL FOR
THE PETITIONER .***

AND

**RAJNISH S/O SHRI RAMESH AGRAWAL, AGED
ABOUT 49 YEARS, OCCUPATION: BUSINESS,
PROPRIETOR M/S R.R. STONE 185, BHAGAT
SINGH MARG, DEWAS (MADHYA PRADESH)**

.....RESPONDENTS

***(SHRI VIVEK DALAL, LEARNED COUNSEL FOR THE
RESPONDENT [R-1].***

.....
*This application coming on for HEARING this day, with the consent of
parties, heard finally and the court passed the following:*

ORDER

The petitioner has filed the present petition under Section 482 of Cr.P.C being aggrieved by the order dated 08.06.2019 and 06.07.2019 passed by JMFC, Dewas in Criminal Case No.329/2018 whereby the learned trial Court has rejected the applications moved by the petitioner under Section 91 of Cr.P.C.

Facts of the case in short are that the respondent has filed a private complaint under Section 138 of N.I. Act against the petitioner on 01.05.2018

being proprietor of M/s RR Stone. As per the complaint the petitioner being a colonizer had purchased material from the complainant and also hired the services of the JCB Machine, Dumper etc. pursuant to which the petitioner has issued a Cheque No.035942 dated 25.03.2018 for payment of rs.30,00,000/- in favour of the complainant. On being presented, the cheque was dishonored due to 'insufficient funds'. Thereafter, a complaint was made on behalf of the complainant and also served a legal notice on 04.04.2018 to the petitioner and since no payment was made by the petitioner, the complaint has been filed by the respondent for recovery of the said amount.

Based upon the said complaint, the learned trial court took cognizance against the petitioner on 01.05.2018 and petitioner appeared in the matter on 10.07.2018 and thereafter, the charge under Section 138 of N.I. Act was framed. Thereafter, the petitioner has filed an application under Section 91 of Cr.P.C. before the learned trial Court for producing Income Tax Returns and Balance sheet etc, but the learned trial Court vide order dated 08.06.2019 has dismissed the application of the petitioner by observing that the stage of the case. Thereafter, the petitioner has also moved another application under Section 91 of Cr.P.C. for production of the ITR, Balance Sheet and to show the transaction between the petitioner and the complainant, but the learned Court below has dismissed the application vide order dated 06.07.2019 in absence of counsel for the petitioner. Hence, the present petition before this Court.

Learned counsel for the petitioner submits that the learned Court below has erred in not considering that on the basis of the documents mentioned in the application filed under Section 91 of Cr.P.C., the petitioner may establish his innocence under the peculiar facts and circumstances of the case. It is further submitted that the amount as mentioned in the complaint is a huge amount of

Rs.30lacs and in all probability in usual course of business either, is reflected in the accounts book, bank account, income tax return and in the complaint should also have the Bills, Challan, royalty receipt, therefore, to protect the right of the petitioner for fair trial, all the things are necessary to be taken on record. It is further submitted that the learned trial Court has failed to consider that it is well established principle of law that free and fair trial is sine qua non of Article 21 of the Constitution of India and is main object of criminal law, therefore, it should not be hampered in any manner and fair trial must be afforded to every accused. It is further submitted that once the necessity and desirability of documents to be summoned has been established by the petitioner then the learned trial Court ought to have called the documents to confront the witnesses for doing complete justice between the parties. It is further submitted that all the documents which the petitioner has mentioned in the application are necessary in view of the provisions of Section 138 of N.I. Act which draw certain presumption in favour of complainant. Hence, in view of the peculiar facts and circumstances of the case, prays for setting aside the orders of Court below and prayed for allowing the present petition.

In support of his contention, learned counsel for the petitioner has placed reliance over the judgment of this Court passed in the case of **Shivendra Dhakre vs. Narendra Sharma 2017 (3) L.J. 325**, **Bharat Bhai Patel vs. Smt. Radha Agarwal, [2014 (1) MPWN 70]** as well as on the judgement of Apex Court passed in the case of **State of Orissa vs. Debendra Nath Padhi [2005] 1 SCC 568**, **Helios and Matheson Information Technology Limited and Others vs. Rajeev Sawhney and Another [(2012) 1 SCC 699]**, **John K. Abraham vs. Simon C. Abraham and Another [(2014) 2**

SCC 236] whereby the Hon'ble Court has held that the document which may establish innocence of the petitioner and which have material bearing in the controversy can be brought through application under Section 91 of Cr.P.C. during the stage of cross-examination of complainant.

On the other hand, counsel for the respondent submits that the presumption under Section 139 of N.I. Act is statutory presumption and thereafter, once it is presumed that the cheque is issued in whole or in part of any debt or other liability which is in favour of the complainant/holder of the cheque, in that case, it is for the accused to prove the contrary. Hence, it is prayed that the cheque was issued by the petitioner and the same got dishonored when it was presented, hence, the learned Court below has dismissed the application twice rightly in view of the facts and circumstances of the case and prays for rejection of the petition.

In support of his contention, counsel for the respondent has placed reliance over the judgement dated 12.08.2022 of Hon'ble Apex Court passed in the case of **P. Rasiya vs. Abdul Nazer and Anr. in Criminal Appeal Nos.1233-35/2022** whereby the Hon'ble Court has held as under:-

"However, the High Court has failed to note the presumption under Section 139 of the Ni.I. Act. As per Section 139 of the N.I. Act, it shall be presumed, unless the contrary is proved, that the holder of the cheque received the cheque of the nature referred to in Section 138 for discharge, in whole or in part, of any debt or other liability. therefore, once the initial burden is discharged by the complainant that thecheque was issued by the accused and in signature and the issuance of the cheque is not disputed

by the accused, in that case, the onus will shift upon the accused to prove the contrary that the cheque was not for any debt or other liability."

I have heard the learned counsel for both the parties and have perused the record.

From the pleadings of the parties and admission of the complainant, it appears that the petitioner has hired Dumper, JCB Machine, Pock lane Machine etc. and also purchased Sand, Muram and other raw materials etc. from the complainant. No doubt that there is presumption under Section 139 of N.I. Act but onus is upon the accused to prove the contrary that the cheque was not for any debt or liability. No doubt that the complainant is a proprietor of a firm and used to file ITR and maintained balance sheets etc. The application under Section 91 of Cr.P.C. is not maintainable at the stage of framing of charges, but the accused can seek production of the documents to prove his innocence at the later stage/after framing of charges. The Hon'ble Apex Court in the matter of **John K. Abraham (supra)** has dealt with in respect of necessity and desirability of the document for drawing presumption in favour of complainant under Section 118 read with 139 of the N.I. Act burden lies on him to show that he had the requisite funds for advancing money/loan in question to accused. Even otherwise, it is well established principle of law that free and fair trial is sine qua non of Article 21 of the Constitution of India and is main object of criminal law. Therefore, it should not be hampered in any manner and fair trial must be afforded to every accused. Denial of fair trial amounts to injustice to the accused.

Therefore, in the peculiar facts and circumstances of the case, the learned

Court below has erred in rejecting the applications preferred by the petitioners. *Once the necessity and desirability of documents to be summoned has been established then the trial Court ought to have called the documents to confront the witnesses. For doing complete justice between the parties, it is imperative that petitioner be allowed to confront the complaint by the documents to be summoned in the defence of the accused.*

Resultantly, the impugned orders dated 08.06.2019 & 06.07.2019 passed by the learned Court below in Criminal Case No.329/2018 by JMFC, Dewas are hereby set aside and by allowing the applications filed by the petitioner under Section 91 of Cr.P.C. Matter is remitted back to the learned court below for consequential follow up action to summon the documents as mentioned in the applications preferred by the petitioner under Section 91 of Cr.P.c. while affording opportunity to confront the complaint with the aid and support of those documents.

Petition is accordingly allowed and disposed of.

Certified copy as per rules.

(RAJENDRA KUMAR (VERMA))
JUDGE

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