

1  
**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE  
HON'BLE SHRI JUSTICE VISHAL DHAGAT**

**ON THE 20<sup>th</sup> OF JULY, 2023**

**MISC. CRIMINAL CASE No. 39827 of 2022**

**BETWEEN:-**

**R.S. BAGADIYA S/O SHRI SURATA SINGH BAGADIYA,  
AGED ABOUT 42 YEARS, OCCUPATION: DIRECTOR  
RAJSHREE CONSTRUCTION BILASPUR R/O F-6,  
G WALANI, CHAMBER 2ND FLOOR, VYAPAR VIHAR  
BILASHPUR TEHSIL AND DISTRICT BILASPUR  
(CHHATTISGARH)**

**.....APPLICANT**

***(BY SHRI SOURABH SINGH THAKUR - ADVOCATE)***

**AND**

**RAJGAURAV TIWARI S/O SHRI CHANDRASHEKHAR  
TIWARI, AGED ABOUT 39 YEARS, R/O A.D.P.O KOTAMA,  
DISTRICT ANUPPUR (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI SHAILENDRA SINGH - ADVOCATE)***

.....  
*This application coming on for admission this day, the court passed the  
following:*

**ORDER**

Petitioner has filed this petition under Section 482 of Cr.P.C for quashing of order dated 31.05.2022 passed in Criminal Revision No.22/2022.

2. Brief facts of the case are that petitioner is accused before trial Court in complaint case. Respondents had entered into an agreement on 15.01.2021 for construction of a building of Khasra No.170/4 and Plot measuring 15x65=3250 square feet and an amount of Rs.12,50,000/- was paid to him through cheques. After receiving the amount, accused refused to execute

registered sale-deed in respect of said plot and building. Since sale-deed was not executed, therefore, amount has been returned through cheque by accused. Said cheque got bounced from the Bank and, therefore, complaint under Section 138 of Negotiable Instruments Act was filed and allegations were also made in respect of committing offences under Section 417, 420 of IPC.

3. Said complaint case was fixed for recording of evidence of complainant. On 16.02.2022, right of cross-examination of complainant namely Rajgaurav Tiwari was closed as on 06.12.2021, accused was informed of his right to cross-examine the witnesses and if he wants to cross-examine the witnesses, then he has to file his defence. Despite being informed, defence was not filed, therefore, right was closed vide order dated 16.02.2022. Petitioner filed criminal revision against said order and same was dismissed.

4. Counsel appearing for petitioner submitted that petitioner was in jail, therefore, he did not have any opportunity to comply with provision of Section 145(2) of Negotiable Instruments Act. Adequate opportunity and right of his defence has been denied by trial Court as well as Revisional Court, therefore, in not granting him further opportunity to file his defence and cross-examining the complainant/witness, the Court has committed error of law. In these circumstances, prayer is made for quashing of order dated 16.02.2022.

5. Counsel appearing for respondents submitted that since evidence was not adduced by petitioner in accordance with provision of Section 145(2) of Negotiable Instruments Act, therefore, no error has been committed by Court below in closing the right to cross-examine the witnesses.

6. Heard learned counsel for parties.

7. Revisional Court in its order dated 31.05.2022 considered the records of the case and found that accused has filed an application under Section 437

for grant of bail. Accused was released on bail on furnishing bail bond of Rs.20,000/-. Accused did not furnish any bail bond for being released on bail. Thereafter, on 15.12.2021, bail bond was furnished and accused was enlarged on bail. On 16.02.2022, complainant was examined. On earlier date i.e. 06.01.2021, accused was informed of his right to cross-examine the complainant and to file his defence but he has not done so, therefore, his right for cross-examination of witness was closed. Considering aforesaid records and reasoning of the trial Court, it is clear that though petitioner was granted bail on 06.12.2021 but he could not furnish bail before the trial Court. Bail was furnished on 15.12.2021. Petitioner was informed of his right of cross-examination and to furnish his defence on 06.12.2021. On said date, he was in jail and has not furnished bail bonds. He was released on bail on 15.12.2021. On 16.02.2022, rights of petitioner was closed. Petitioner was on bail and was not in jail custody between 15.12.2021 to 16.02.2022. He had more than two months' time for filing application and his defence. Petitioner was not in jail during said period.

8. Section 145 of Negotiable Instruments Act is reproduced as under :

**145. Evidence on affidavit -**

*(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.*

*(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving*

*evidence on affidavit as to the facts contained therein.*

9. As per Section 145(2) of Negotiable Instruments Act, the Court has discretion for ordering cross-examination of witnesses and in case application is filed by party for cross-examination of witness, therefore, it is obligatory for Court to call any witness for cross-examination. In this case, no application was filed under Section 145(2) of Negotiable Instruments Act, therefore, Court has not summoned the complainant for cross-examination. The Court did not exercise its discretion for calling him for cross-examination. Reason for not exercising discretion was that more than eight cases of Negotiable Instruments Act are pending against accused, therefore, accused was well aware of the provisions of Negotiable Instruments Act. He was also informed of his right for cross-examination on 06.12.2021 and he was released on bail on 15.12.2021. Despite having sufficient time and opportunity, no application was filed under Section 145(2) of Negotiable Instruments Act. He has not filed his defence before the Court in summons case under Section 251 of Cr.P.C and accused also absented himself from trial and arrest warrants were issued against him. In these circumstances, discretion granted to Court was not exercised under Section 145(2) of Negotiable Instruments Act.

10. Considering aforesaid facts and circumstances of the case, it is clear that it is not obligatory on Court to call complainant for cross examination, if no application has been filed by accused for cross-examining the complainant.

11. In view of same, I do not find any illegality committed by trial Court in closing the right to cross-examine the witnesses due to non-compliance of provisions of Section 145(2) of Negotiable Instruments Act and Section 251 of Cr.P.C.

12. In view of same, petition is **dismissed**.

(VISHAL DHAGAT)  
JUDGE

nd

