



2026:CGHC:510



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRMP No. 756 of 2025

1 - Kamlesh Kumar Shrivastava Son Of Late Vinod Bihari Shrivastava, Aged About 56 Years Resident Of Subhash Nagar Durg, District Durg (C.G.)

2 - Manoj Kumar Sahu, Son Of Kanhaiya Lal Sahu, Aged About 51 Years Resident Of Shakti Nagar, Near Sulabh Shouchalay, chaprasi Plot, Durg, Police Station Mohan Nagar, District Durg (C.G.)

... Petitioner(s)

versus

1 - Mohan Dubey Son Of Ramswarup Dubey, Aged About 39 Years Resident Of A.D. Chowk, Ward No.20, Gali Nagar 02, Teacher Colony Bhawani Chowk, Kota, Raipur, District Raipur (C.G.)

... Respondent(s)

For Petitioner(s) : Mr. Praveen Dhurandhar, Advocate.

For Respondent(s) : Mr. Mohan Kumar Dubey, Respondent in Person.

Hon'ble Shri Justice Ravindra Kumar Agrawal, J.

Order on Board

05/01/2026

- The present petition under Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023, has been filed by the petitioners against the order dated 07-02-2025, passed by learned Sessions Judge, Durg, in



Criminal Revision No. 266/2024, whereby the Criminal Revision filed by the respondent/complainant is allowed and the matter is remitted back to the learned trial Court to proceed in the case in accordance with law laid down by the Hon'ble Supreme Court and High Courts. The said Criminal Revision was arising out of the order dated 27-08-2024, passed by learned Judicial Magistrate First Class, Durg, in unregistered Complaint Case (filing No. 15405/2024) "Mohan Dubey v. Kamlesh Kumar Shrivastava and Another".

2. The brief facts of the case are that the Respondent/Complainant was employed as a Computer Graphics Designer at District Cooperative Association, Durg, from the year 2015 to 2022. Due to non-payment of his salary, he left his job and joined in another concern at Raipur. He initiated a recovery proceeding of his arrears of salary of Rs. 2,51,000/-, before the Labour Court, Durg. The Respondent/Complainant had given two blank cheques bearing Nos. 312530, which was of Allahabad Bank, and 174663, which was of Indian Bank, as security for the refund of the amount given by the petitioner No. 1 to him for the Diwali festival. The other employees have also given their cheques for the same. On 28-02-2024, a demand notice was served upon the Respondent/Complainant, intimating that his cheques have been dishonoured by the payee bank and asking him to pay the amount of the cheque. Thereafter, the Respondent/Complainant made a complaint to the Mohan Nagar police, Durg, but no action was taken on his complaint, and an intimation under Section 155 of the Cr.P.C. of a non-cognizable offence was given on 15-05-2024. After approaching the Superintendent of Police, Durg, he filed an application under Section 156(3) of the Cr.P.C.



before the learned Judicial Magistrate First Class, Durg, (hereinafter called as “JMFC”), for a direction to register the FIR against the present petitioners for the offence of Section 420, 120-B of the IPC, and to investigate the offence. The said application of the Respondent/Complainant was dismissed by the learned JMFC, on 27-08-2024.

3. The said order dated 27-08-2024 was challenged by the Respondent/Complainant before the learned Sessions Judge, Durg, by filing a Criminal Revision, which is allowed vide order dated 07-02-2025 and the learned Sessions Judge, Durg, remitted the matter back to the learned JMFC for fresh consideration of the case in the light of the judgment passed by the Hon’ble Supreme Court and High Courts, in accordance with law. Hence, this petition.
4. Learned counsel for the petitioners would submit that the learned Revisional Court has erred in considering that the learned JMFC has not called the police report and therefore, has not applied its mind. Since the police have already given intimation under Section 155 of Cr.P.C. about a non-cognizable offence, there was no need to call the police report. He would further submit that only to create the defence and as a counterblast, the proceeding is initiated by the Respondent/Complainant. He is an accused in a complaint Case filed by the petitioner No. 1 against the Respondent/Complainant, for the offence under Section 138 of the Negotiable Instruments Act, 1881, before the learned JMFC. He would also submit that as per the judgment of “**Priyanka Shrivastava v. State of U.P.**” 2015 (6) SCC 287, and “**Babu Venketesh v. State of Karnataka**” 2022 LiveLaw SC 181, an affidavit is required to be filed in support of the complaint, but



in the present case, no affidavit was filed by the complainant, therefore, the rejection of the application by the learned JMFC was proper. It is also submitted by him that the cheques were issued in the years 2021 and 2022, but the complaint was made in the year 2024, which itself shows his ulterior motive. There are no prima facie ingredients of the offence of cheating or conspiracy in the complaint, and an investigation cannot be ordered. He would lastly submit that the learned Sessions Judge has erroneously observed in its order that before deciding the application, the learned JMFC should have called the police report to verify the genuineness of the complaint of the Respondent/Complainant, whereas the learned JMFC has considered the allegations of the complaint and comes into conclusion that there is no prima facie offence disclosed from the complaint for taking cognizance of the offence, and has dismissed the application of Section 156(3) of Cr.P.C. Therefore, the impugned order suffers from illegality and perversity, and the same is liable to be set-aside.

5. Per contra, the Respondent in person and his authorized representative, opposed the submissions made by the learned counsel for the petitioners and submits that the learned Sessions Judge has passed the order in accordance with law. They have rightly considered the judgment of the Hon'ble Supreme Court passed in Priyanka Shrivastava's case (supra) and other judgments passed by other High Courts. He would also submit that the learned Sessions Judge has rightly exercised its jurisdiction under Section 398 of the Cr.P.C. and remitted the matter back to the learned JMFC for fresh consideration in accordance with law. It is also submitted by him that on the same day, the Respondent/Complainant had filed two proceedings, one was the



application under Section 156(3) of Cr.P.C., and the second was the complaint case under Section 200 of the Cr.P.C. before the same court at the same time. Considering the nature of proceeding, he swore an affidavit in support of both the proceeding, i.e. application under Section 156 (3) of Cr.P.C. and the complaint case under Section 200 of Cr.P.C., and it is specifically mentioned in the affidavit that the same may be considered in both the proceedings. Therefore, the guidelines of Priyanka Shrivastava's case have been followed by the Respondent/Complainant. The learned JMFC has not dismissed the application on the ground that no affidavit has been filed in support of the application under Section 156(3) of Cr.P.C., but it was dismissed because no sufficient evidence was available on record for taking cognizance of the offence, for which the learned Sessions Judge has remitted the matter for its reconsideration. It is also submitted by him that the cheques of the Respondent/Complainant were misused by the petitioners, and the Respondent/Complainant is facing a trial of a false case of cheque dishonour. There is no merit in the petition, and the same is liable to be dismissed.

6. I have heard learned counsel for the petitioner and respondent in person and perused the documents annexed with the petition.
7. The main grievance of the petitioner is that the Respondent/Complainant has not filed an affidavit in support of his application under Section 156 (3) of the Cr.P.C., which is mandatory as per the judgment of the Hon'ble Supreme Court in Priyanka Shrivastava's case (supra). The Respondent/Complainant in person has filed the reply to the petition, and along with the reply, he annexed the document (Annexure R-4), at page No. 15, which is a copy of the



memo of complaint filed by the Complainant before the learned trial Court. At page No. 15 of his reply, he annexed a copy of the affidavit sworn by the Respondent/Complainant on 18-06-2024, in which it has been averred in para 2 that the affidavit is filed in support of the complaint as well as the application of Section 156(3) of Cr.P.C. it is necessary to reproduce here the contents of para 2 of the affidavit filed by the Respondent/Complainant, which reads as under:-

“2. यह कि मैंने श्रीमान न्यायालय के समक्ष परिवाद पत्र अंतर्गत धारा 420, 120 बी, 34 भा.द.वि. पेश किया हूँ साथ ही धारा 156 (3) द.प्र.सं. पेश किया हूँ जिसमें वर्णित समस्त कथन मेरी निजी जानकारी व विश्वास में सही व सत्य है। जिसके समर्थन में यह शपथ पत्र पेश है।”

8. The Respondent/Complainant has filed a complaint case under Section 200 of the Cr.P.C. and the application under Section 156(3) of the Cr.P.C. together on the same day and before the same Court. He, in his own wisdom, has executed a single affidavit in support of both the proceedings as the same were arising out of a common cause of action. Therefore, it cannot be said that the Respondent/Complainant has not filed any affidavit in support of the complaint. Though the said affidavit is tagged with the file of the complaint case, but in such technicalities, the complaint cannot be dismissed.
9. Further, the learned trial court has not dismissed the application of the Respondent/Complainant filed under Section 156(3) of Cr.P.C. on the ground that it was not supported by an affidavit, but it was dismissed on the ground that from the material annexed with the application, no prima facie offence is disclosed. The learned revisional Court has considered that the learned trial Court has not called the police report and has not inquired into the matter, and has passed the order, which is not the correct view. It has also been observed by the Revisional



Court that to prevent the miscarriage of justice, the learned trial Court should have called the police report in the subject matter and further that the order passed by the learned trial Court is not the speaking order.

10. The learned Revisional Court remitted the matter back to the learned trial Court by invoking the jurisdiction under Section 439 of the BNSS, 2023 (Section 398 of the Cr.P.C.) for further consideration in the matter, in which this Court does not find any illegality or jurisdictional error to interfere.
11. Accordingly, the present criminal miscellaneous petition is **dismissed**.

Sd/-
(**Ravindra Kumar Agrawal**)
Judge

Alok