

-( 1 )- MCRC No. 19180/2019  
Smt. Rekha Agrawal vs. Ramu Sharma & Another

**HIGH COURT OF MADHYA PRADESH**

**BENCH AT GWALIOR**

**(Single Bench)**

**Misc. Criminal Case No. 19180/2019**

Smt. Rekha Agrawal ..... APPLICANT  
Versus  
Ramu Sharma ..... NON-APPLICANTS

**CORAM**

**Hon. Shri Justice Rajeev Kumar Shrivastava**

**Appearance**

Shri Amit Lahoti, learned counsel for the applicant.

Shri Vivek Mishra, learned counsel for the non-applicant  
No.1.

**Reserved on - 17/09/2019**

**Whether approved for Reporting : No**

**ORDER**

**(Passed on 18<sup>th</sup> October, 2019)**

The applicant has preferred the present petition under Section 482 of CrPC, challenging the order dated 11.4.2019 passed by Sessions Judge, Sheopur in Criminal Revision No. 2/2019 (Smt. Rekha Agrawal vs. Ramu Sharma and another),

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confirming the order dated 12.11.2018 passed by JMFC, Sheopur in Complaint Case No. 928/2015, whereby the charge has been framed against the applicant for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for brevity, the 'NI Act')

2. The facts leading to filing of the instant application are that non-applicant No.1 filed a private complaint under Section 138 of the NI Act, stating therein that after dishonour of the cheque in question, statutory notice was sent to the applicant. The trial Court after perusing the material and the statements available on record found that there are sufficient grounds for framing the charge and accordingly framed the charge against the applicant for the offence punishable under Section 138 of the NI Act vide order dated 12.11.2018. Feeling aggrieved, the applicant preferred criminal revision under Section 397 read with Section 399 of CrPC before the Sessions Court. The Sessions Court vide impugned order dated 11.4.2019 dismissed the revision holding that the revision against the order passed under the provision of Section 251 of CrPC is not maintainable, and affirmed the order of JMFCm Sheopur. Hence, this petition under Section 482 of CrPC.

3. Learned counsel for the petitioner has submitted that the order passed by JMFC is not sustainable as no statutory notice has been received by the petitioner before filing of the complaint. The revisional Court has erred in holding that the revision is not maintainable and if it was held that revision is not maintainable then the revisional Court has erred in deciding the revision on merits. Hence, prayed for setting aside the orders of the Court below.

4. Per Contra, learned counsel for the respondent No.1

opposed the submissions of learned counsel for the petitioner and prayed for dismissal of the petition filed under Section 482 of CrPC.

5. I have considered the rival contentions of the parties and perused the documents available on record.

6. The submission put forth by learned counsel for the petitioner that he has not received notice before filing of the complaint is, in the opinion of this Court, a triable issue and cannot be proceeded as an indisputable position as is expounded by the Hon'ble Apex Court in **Ajeet Seeds Limited vs. K. Gopala Krishnaiah [(2014) 12 SCC 685]**.

7. In **Adalat Prasad v. Roolal Jindal & others [2004 SCC (Cri) 1927]** and **Subramaniam Sethuraman v. State of Maharashtra and another [AIR 2004 SC 4711]**, the Honble Apex Court has held that revision against summoning order is not maintainable and the only remedy available to the accused against the summoning order is to move the High Court for invoking jurisdiction under Section 482 of CrPC. Even in **Bhajanlal and others vs. State of UP and another [(2006) 5 All LJ 175]** it has been held that revision against the summoning order is not legally maintainable. In view of the aforesaid annunciation of law, in the present case the revisional Court has not committed any error in rejecting the revision being not maintainable against the order passed under Section 251 of CrPC.

8. Even otherwise, in **Soma Chakravarti V. State, [( 2007) 5 SCC 403]**, it is held that at the time of framing of charges the probative value of material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true. Before framing a charge the court must apply its judicial

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mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. Whether the accused committed the offence or not, can only be decided in the trial.

9. In view of the aforesaid discussion, I find no perversity or illegality in the order impugned passed by the Court below warranting any interference by this Court at the stage of framing of charge. Consequently, the petition has no substance and is hereby dismissed. The interim order dated 13.5.2019 passed by this Court staying proceedings of the trial Court is vacated.

A copy of the order be sent to the trial Court concerned for information and compliance.

(yog)

**(Rajeev Kumar Shrivastava)**  
**Judge.**