

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P. (Crl.) No. 850/2002

SMT. POONAM KHANNA Petitioner
! Through: Mr. Yakesh Anand and
Mr. Murari Kumar, Advs.

versus

\$ SHRI L.K. KAUL Respondent
^ Through: None.

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

: **V.K. JAIN, J. (Oral)**

1. This is a petition under Article 226 and 227 of the Constitution read with Section 482 of the Code of Criminal Procedure for quashing a criminal complaint which was filed by the respondent against the petitioner and others under Section 138 of Negotiable Instruments Act.

2. The complaint was filed against (1) Pradeep Khanna HUF, (2) Pradeep Kumar Khanna, husband of the petitioner and (3) Smt. Poonam Khanna. Shri Pradeep Kumar Khanna, husband of the petitioner has died during pendency of the complaint. It was alleged in the complaint that accused No.1 Pradeep Khanna HUF is the owner of property No.21, Aurangzeb Road, New Delhi and Pradeep Kumar Khanna, Poonam Khanna and their two minor daughters were the members of that HUF. It was

further alleged in para 2 of the complaint that on account of repayment of various loans taken by the HUF through Shri Pradeep Kumar Khanna as its Karta as well as by Shri Pradeep Kumar Khanna and Smt. Poonam Khanna on various occasions and also against payment of consideration of service charges agreed to be paid by the accused persons to the complainant for getting property No. 21, Aurangzeb Road vacated from the erstwhile tenant Sudan Embassy as also against repayment of various expenses incurred by the complainant for maintenance, renovation, electricity, water, security, etc. in respect of the aforesaid property on behalf of the accused persons and in consideration of payment of agreed interest thereon and further in consideration of the mortgage of the said property in favour of the accused persons, they are liable to pay to the complainant a sum of Rs.43,73,12,233/-. It has been further alleged that in part payment/discharge of the aforesaid debt, accused No.2 and 3, i.e., Pradeep Kumar Khanna and Smt. Poonam Khanna issued two cheques amounting to Rs.31,36,73,542/-. Out of them, one cheque for Rs.21,36,73,542/- was issued by accused Pradeep Kumar Khanna and the other cheque No.166486 dated 19th January, 2001 drawn on Punjab National Bank, Mehrauli, for Rs.10 crores was issued by accused No.3 Smt. Poonam Khanna. It was further alleged that the aforesaid cheques when presented to the bank were dishonoured. The cheque issued by the petitioner Smt. Poonam Khanna was returned by the bank with remarks 'insufficient funds' vide memo dated 20th January, 2001. The complainant also claimed that vide letter dated 29th

January, 2001 dispatched on 2nd February, 2001, he sent statutory notices of demand to the accused persons asking them to make the payment of the amount of the aforesaid dishonoured cheques and those notices were duly served upon them.

3. The first contention of learned counsel for the petitioner is that since getting the property vacated from a tenant is an illegal purpose as it can be achieved only either by bribing the concerned persons or by use of force, no complaint would lie on account of dishonour of a cheque, if issued towards a liability incurred on account of such an illegal contact. I find that in para 2 of the complaint, the complainant has alleged that the liability of the accused persons arose on account of (i) service charges agreed to be paid by accused persons for getting property No.21 Aurangzeb Road vacated from the erstwhile tenant; (ii) repayment of various expenses incurred by the complainant for the maintenance, renovation, electricity, water, security, etc. in respect of the aforesaid property and in consideration of payment of agreed interest thereon; (iii) in consideration of the mortgage of the aforesaid property in favour of the complainants. Thus, the service charges payable for getting the property No. 21 Aurangzeb Road, New Delhi was not the sole consideration for issue of cheques by the petitioner and her husband. In fact, when the complaint came in the witness box, he specifically claimed that the accused took loans and had to pay an amount to which came to more than Rs.55 crores on the date he was examined. Moreover, it is not necessary that the property could be got vacated only by illegal means such as

giving bribe and/or use of force. There could be legal ways of getting the property vacated from a tenant. However, I need not dilate further on this aspect for the simple reason that the service charges alleged to be payable to the complainant was not the only consideration alleged in the complaint for issue of cheques in question. In any case, there is a statutory presumption under Section 139 of Negotiable Instruments Act, that the cheque was issued for consideration, though it is a rebuttable presumption.

4. The learned counsel for the petitioner has referred the decision of Hon'ble Supreme Court in R.P. Kapur vs. State of Punjab AIR 1960 SC 866, where the Hon'ble Supreme Court summarized the following as some of the categorized cases where the inherent powers can and should be exercised to quash the proceedings.

- (i) Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;
- (ii) Where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;
- (iii) Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

5. In the present case, neither there is any legal bar against the institution of the complaint filed by the respondent nor can we say that the allegations made in the complaint even if taken on their face value and accepted in their entirety do not

constitute the offence under Section 138 of Negotiable Instruments Act. The third category referred above does not apply since the evidence is yet to be led, and therefore, it cannot be said that the complainant has failed to produce any legally admissible evidence to prove the allegations made by him. The learned counsel has also relied upon a decision in State of Haryana vs. Bhajan Lal 1992 Supp. (1) SCC 335, where the Hon'ble Supreme Court indicated certain categories where the power under Section 482 of Code of Criminal Procedure could be exercised by the Court. These categories are as under:-

“102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just

conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal (sic) proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.”

6. According to the learned counsel, the case would be covered by illustration 7 referred above. In my view, at this stage, it cannot be said that the criminal complaint filed by the respondent is necessarily actuated by mala fide and is a malicious one, having been made only for wrecking some kind of vengeance on the petitioner or to settle some private or personal score against her.

7. At this stage, it is not permissible for this Court in exercise of Writ jurisdiction or in exercise of its inherent jurisdiction under Section 482 of Code of Criminal Procedure to go into questions of facts and to undertake an exercise to determine whether those allegations are true or not. These are matters which require to be dealt with by the Trial Court at an appropriate time. This court, while exercising its extraordinary powers, cannot go into the question as to whether any amount as alleged in para 2 of the complaint was payable to the

complainant or not. This Court cannot go into the question as to whether cheque in question was actually issued by the petitioner or not. Admittedly, a cheque signed by the petitioner has been filed alongwith the complaint and that cheque when presented to the bank has been dishonoured for want of funds. The learned counsel for the petitioner states that in fact the cheque in question is a forged document and was never issued by the petitioner though it does bear her signature. The question whether the cheque in question is a genuine document or is a tampered document as claimed by the petitioner is a matter which can be decided only during trial after recording evidence and cannot be the subject matter of adjudication in a petitioner under Article 226 and 227 of the Constitution or Section 482 of the Code of Criminal Procedure. At the preliminary stage, the Court is not required to go into the defence taken by the accused and has to examine the matter purely from the point of view of the complainant without adverting to any defence which the accused may have.

8. In *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi* 1976(3) SCC 736, the Hon'ble Supreme Court while examining the scope of Section 202 of the Code of Criminal Procedure, *inter alia*, held as under:-

“It would thus be clear from the two decisions of this Court that the scope of the inquiry under Section 202 of the Code of Criminal Procedure is extremely limited – limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint – (i) on the materials placed by the complainant before the court; (ii) for the limited purpose of finding

out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.”

9. Since the allegations made in the complaint, if taken on their face value and as true in their entirety, do prima facie commission of offence under Section 138 of Negotiable Instruments Act, there is no ground for quashing the complaint filed against the petitioner. It was also pointed out by the learned counsel for the petitioner that Civil suit filed by the respondent was dismissed in default vide order dated September 11, 2009. That to my mind would not make any difference to the outcome of the present petition. In fact, the complainant/respondent has not appearing in this Court, but irrespective of his absence, the petition has to be decided on merit alone.

10. However, keeping in view all the facts and circumstances of the case, the petitioner is exempted from personal appearance during pendency of the complaint subject to the conditions that (i) the advocate engaged by her shall appear on every date and would not seek adjournment on account of her absence; (ii) the complainant will appear on such dates for which she is specifically directed by the Trial Court to appear in person for a specified purpose such as giving notice to her under Section 251 of Code of Criminal Procedure or recording her statement under Section 313 Cr.P.C.

11. The learned Metropolitan Magistrate is directed to take up the hearing of the complaint on priority basis and finally decide the same within six months from the parties appearing before him.

The petition stands disposed of with these directions.

(V.K.JAIN)
JUDGE

DECEMBER 07, 2009
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