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HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on: March 27, 2009

Judgment delivered on: March 31, 2009

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(1) Crl. M.C. No. 8006 of 2006

% Y. Sharma

.... Petitioner

Through: Mr. A.K. Vali and Mr. Rakesh
Tikku, Advocates

Versus

State (Govt. of NCT of Delhi) & Others.. Respondents

Through: Mr. Amit Sharma,
Additional Public Prosecutor for
respondent Nos. 1 to 3.
Mr. Bankim Kulshrestha, Mr. Kishan
Kumar & Mr. Deepak Vohra, Advocates
for respondent No.4.

(2) Crl. M.C. No. 8370 of 2006

% Satish Kumar Goel

....Petitioner

Through: Mr. Nishit, Advocate

Versus

State (Govt. of NCT of Delhi) & Others..... Respondent

Through: Mr. Amit Sharma,
Additional Public Prosecutor for
respondent Nos. 1 to 3.
Mr. Bankim Kulshrestha, Mr. Kishan
Kumar & Mr. Deepak Vohra, Advocates
for respondent No.4.

+ **(3) Crl. M.C. No. 12 of 2007**

% Heman Kumar Gupta ... Petitioner

Through: Mr. Sidharth Luthra, Senior
Advocate with Ms. Smriti Sinha, Advocate

Versus

State (Govt. of NCT of Delhi) & Others.....Respondent

Through: Mr. Amit Sharma,
Additional Public Prosecutor for
respondent Nos. 1 to 3.
Mr. Bankim Kulshrestha, Mr. Kishan
Kumar & Mr. Deepak Vohra, Advocates
for respondent No.2.

(4) Crl. M.C. No. 289 of 2007

% K.K. Gupta Petitioner

Through: Mr. Chetan Sharma, Senior
Advocate with Mr. Rajiv Ranjan
Pandey, Advocate

Versus

State (Govt. of NCT of Delhi) & Others ... Respondents

Through: Mr. Amit Sharma, Additional
Public Prosecutor for
respondent Nos. 1 to 3.
Mr. Bankim Kulshrestha, Mr.
Kishan Kumar & Mr. Deepak
Vohra, Advocates for
respondent No.4.

COARM

Hon'ble Mr. Justice Sunil Gaur

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SUNIL GAUR, J.

1) The question raised in the above captioned four petitions is that whether a separate police case can be registered at the instance of an accused in the proceedings under Section 138 of the Negotiable Instruments Act, against the petitioners, who are the complainants in the above said proceedings. The common order impugned in all these four petitions is of 6th November, 2006, passed on the criminal complaint of respondent No.4, under Sections 420/406 of the IPC. Vide impugned order, a direction was issued by the concerned Metropolitan Magistrate to the local police to register an FIR under Sections 420/406 of the IPC on the criminal complaint of respondent No.4 herein and accordingly, in pursuance to the impugned order, FIR No. 414 of 2006, under Section 406/420 of the IPC was registered at Police Station Greater Kailash, Part-I, New Delhi on 18th November, 2006.

2) In these petitions, not only quashing of the aforesaid impugned order, but also of the complaint No. 3030-1/2006, on the basis of which FIR No. 414 of 2006, under Sections 420/406 of the IPC was registered, is sought. According to the petitioners, they were the Directors of M/S Unity Fincap Pvt. Ltd. which was member of National Stock Exchange and it used to deal in purchase and sale of shares. Mr. Diwakar Vaish- respondent No.4, was the Consultant of this company in the year 2003-2004 and was a Chartered Accountant and this company had incurred losses during the above said period and to clear his liability, respondent No.4 had issued a cheque in the sum of Rupees

1,22,29,428/- (Rupees twelve crores two lacs twenty nine thousand and twenty eight only) in February, 2005 and another cheque of Rupees 2,00,90,000/- (Rupees two crores and ninety thousand only) on 25th October, 2005.

3) Upon dishonouring of the above referred two cheques, criminal complaints under Section 138 of the Negotiable Instruments Act were filed by the petitioners and others, against respondent No.4 herein, and despite bailable warrants issued against respondent No.4, he did not appear in the aforesaid criminal cases and instead thereof, he filed a criminal complaint against the petitioners (who are the complainants of the proceedings under Section 138 of the Negotiable Instruments Act) and the offences alleged against the petitioners were of cheating etc..

4) Respondent No.4's complaint, Annexure P-1, along with the prayer made under Section 156 (3) of the Cr.P.C., was entertained by the learned Metropolitan Magistrate, who vide impugned order of 6th November, 2006, had directed the registration of the FIR for the offences under Sections 420/406 of the IPC against the present petitioners. However, hardly any police investigation could be carried out, as aforesaid impugned order was promptly stayed by this court in these petitions.

5) Admittedly, respondent No.4 had filed his complaint against the petitioners, after the issuance of bailable warrants against him in the proceedings under Section 138 of the Negotiable Instruments Act. Therefore, it is contended on behalf of the present petitioners that the present proceedings against

the petitioners have been taken out to circumvent the proceedings against respondent No.4 under Section 138 of the Negotiable Instruments Act. It has been contended on behalf of the petitioners that respondent No.4's complaint, at best, is his defence to the proceedings under Section 138 of the Negotiable Instruments Act, initiated against him by the petitioners.

6) The stand of respondent No.4 is of handing over blank signed cheques to K.K. Gupta- one of the petitioners herein, and according to respondent No.4, these cheques were for the balance consideration which was to be deposited after transferring of the equity shares, in his name and the allegations of respondent No.4 are that instead of transferring the shares of M/S Unity Fincap Pvt. Ltd., worth Rupees thirty lacs only, the amount in these cheques has been arbitrarily filled up without any pre-existing liability.

7) Accepting the aforesaid version of respondent no.4 to be correct, trial court in the impugned order has observed as under:-

“The intention to cheat was seen from the very beginning as the accused person had not only mislead but to put illegal pressure on the complainant had forged the record and used the cheques in question, given in question, for the purpose which was not meant for them”.

8) Entertaining of a criminal complaint is one thing and of issuing direction to the local police to register an FIR for the offence of cheating, is another thing. In the impugned order, no reasons are given as to why there was a need for a police investigation on the complaint of respondent No.4 and why it

could not be tried as a criminal complaint case, especially so when respondent no.4 is an accused in the criminal proceedings under Section 138 of the Negotiable Instruments Act launched against him by the petitioners herein. Even during the course of the arguments, learned counsel for respondent No.4, could not justify a police investigation, except that, it was stated that there are other blank cheques also which were handed over to K.K. Gupta, one of the petitioners herein, and petitioner- Y.Sharma, himself has got a FIR registered against his co-petitioner- K.K. Gupta and all this requires a serious police investigation to arrive at the truth.

9) During the course of the arguments, both the sides have advanced their respective submissions which are touching on the merits of their pleas and counter pleas. For instance, it is stated that respondent No.4 is a Chartered Accountant and he is presumed to know that in a private limited company, no equity shares can be sold without the permission of Board of Directors of the company and how can he issue blank cheques without their being any Memorandum of Understanding and signing of the Transfer Deed. It is pointed out that respondent No.4 had not requested his bankers to stop the payment of these cheques and the present criminal proceedings initiated by respondent No. 4 against the present petitioners, is a counter blast and is a afterthought story which cannot be accepted on the face of it and therefore, the impugned order and the subsequent proceedings arising therefrom, are rendered unsustainable.

10) Learned Counsel for respondent No.4 has tried to justify the impugned order by contending that the handwriting on the cheques in question and the counterfoil of the cheque book has to be ascertained and for that purpose police investigation is certainly required and out of the five blank cheques, only one has been forged and the remaining four blank cheques are to be recovered from the petitioner/accused persons and this can be done by the police only. It is pointed out that in respect of one of the cheques, the record slip is written by petitioner – K.K Gupta in his own handwriting and the same is for an amount of Rupees five lacs only and how this amount can become Rupees 1.22 crores. Reliance has been placed upon the decision of the Apex Court, reported in **1996 (1) SCC 542** to contend that even if the complainant is guilty of *malafide*, it would be no ground for quashing of the prosecution and the records of the company in question have to be seized which can be done only in police investigation. Furthermore, it is contended that the questions raised herein are mixed questions on facts and law and are not required to be gone into in these proceedings. Lastly, it is contended that it is not a fit case where powers under Section 482 of the Cr. P.C. could be used for stifling a legitimate investigation and prosecution of the petitioners. However, no response to these petitions has been given by respondent No.4.

11) The decisions reported in 2007 (1) JCC 236; 2007 (1) JCC NI 128; 2007 (1) JCC 877; JT SC 172 (2006); 2006 2 CRIMES 130 SC; 2006 (3) SCC (SC) 155; 2005 CrL LJ 2028; 2004 6 SCALE 281; JT 2004 (7) SC 488; JT 2004 9 SC 486; AIR 2003 SC 4140; AIR

2003 SC 2612; 2002 1 SCC 714; 2001 (V) AD SC 260; 2001 AD SC 109; JT 2001 6 SC 631; JT 2001 5 SC 551; AIR 2000 SC 3101; 1999 8 SCC 686; 1999 8 SCC 728; 1997 SCC Cri 1073; AIR 1996 SC 2208; 1996 7 SCC 705; 61 (1996) DLT 633; JT 1995 (4) SC 124; 1995 6 SCC 194; (1994) 2 SCC 227; AIR 1993 SC 1082; AIR 1993 SC 892; AIR 1992 SC 604; AIR 1991 SC 1260; AIR 1990 SC 494; AIR 1988 SC 709; AIR 1983 SC 67; AIR 1982 SC 949; AIR 1977 SC 1489; AIR 1963 SC 447; AIR 1955 SC 196; 2008 (1) JCC (NI) 42; AIR 2000 SC 27; AIR 2000 SC 27; JT 2008 (13) SC 455 and 2009(1) JCC 260 were referred to by the parties during the course of the hearing of these petitions.

12) Efforts made to mediate upon this matter by Lok Adalat did not prove fruitful. To test the counter blast theory, attention of Counsel for the respondent No.4 was withdrawn to Ground-B of the Miscellaneous Application No. 14564/2006 to the effect that *“applicant submitted before the learned ASJ that he is not only willing but also ready to pay the alleged cheque amount provided petitioner submit the accounts before the Courts, wherein the liability, as claimed in the complaint under Section 138 of the Negotiable Instruments Act, 1881, is reflected against the applicant”*. The response of Counsel for respondent No.4 was that it was just for reference and no willingness was shown for reconciliation of the accounts.

13) After having deliberated upon the rival submissions of the parties and upon going through the record of this case and the decisions cited, I find that in a recent decision reported in “ *M/S Eicher Tractor Ltd. & Others V. Harihar Singh & Another*” **2009**

(1) JCC 260, the Apex Court found subsequent initiation of criminal proceedings to be counter blast to earlier prosecution and subsequent/ later prosecution was quashed but strictly speaking, there are no precedents in criminal law. However, the citation of the Apex Court, which is closest to the facts of this case, is of “*Sunil Kumar Vs. Escorts Yama Motors Ltd. and others*” **(1999) 8 SCC 468** wherein lodging of the FIR for the offence of cheating etc. by the defaulters in criminal proceedings under Section 138 of the Negotiable Instruments Act, on the plea of blank cheques, was held to be an abuse of the process of the court and it was found that the subsequent FIR was lodged to pre-empt the proceedings under Section 138 of the Negotiable Instruments Act. The pertinent observations made in this citation are as under:-

“Bearing in mind the law laid down by this court in the case referred to earlier and the contentions raised by the learned counsel appearing for the parties and on examining the allegations made in the FIR, we are persuaded to accept the submissions of Mr. H.N. Salve and Mr. Arun Jaitley, appearing for the respondent that the necessary ingredients of the offence of cheating or criminal breach of trust have not been made out and on the other hand the attendant circumstances indicate that the FIR was lodged to pre-empt the filing of the criminal complaint against the informant under Section 138 of the Negotiable Instruments Act. The High Court, therefore, was well within its power in quashing the FIR as otherwise it would tantamount to an abuse of the process of the court. We, therefore, see no jurisdiction for our interference with the impugned decisions of the High Court in exercise of power under Article 136 of the Constitution”.

14) This court in the case of *"Skippers Beverages Pvt. Ltd. V. State"* **92 (2001) Delhi Law Times 217** has taken note of the growing tendency of asking the police to investigate case under Section 156 (3) of the Cr.P.C. and has asked the Magistrates not to pass orders mechanically. It was held that the Magistrate should act under Section 156(3) of the Cr.P.C. only in those case where the assistance of the police is essentially required and the Magistrate is of the considered view that the complainant on his own may not be in a position to collect and produce evidence in support of his case.

15) In the instant case, no such satisfaction, as noted above, is recorded in the impugned order nor it has been shown before this court by respondent No.4 as to how police investigation on his complaint, is essential for just decision of the case.

16) There is no dispute with the proposition that before the statutory presumption under Section 139 of the Negotiable Instruments Act is raised against respondent No. 4 is raised in those proceedings, the complainant/petitioners have to establish that there was a pre-existing liability. A recent decision of the Apex Court in the case of *"Krishna Janardhan Bhat V. Dattatraya G. Hegde"* **2008 (1) JCC (NI) 50**, on the aspect of drawing of presumptions under Negotiable Instruments Act can be referred to with advantage as it was also a case of issuance of blank cheques. All said and done, no case for invoking the jurisdiction under Section 156 (3) of the Cr.P.C., was made out in the present case. Therefore, the impugned order, directing the registration of the FIR on respondent No.4's complaint, is apparently

unsustainable and is accordingly set aside. Consequential registration of the FIR No. 141 of 2006, has to also go. However, the finding of the trial court in the impugned order of complaint *prima facie* disclosing the commission of offences under Section 420/406 of the IPC against the petitioners herein, is sustainable and is hereby upheld. Consequently, petitioners are liable to be summoned for the aforesaid offences on the complaint of respondent no.4, which has to be tried in accordance with law.

17) Since on facts, there is overlapping, therefore, it would be appropriate that the criminal proceedings under Section 138 of the Negotiable Instruments Act, against respondent No.4 herein, as well as the present criminal complaint proceedings against the petitioners herein, are tried together, by one court, as such a course would secure the ends of justice.

18) These petitions are partly allowed to the extent that the impugned order directing registration of FIR against the petitioners, is set aside, whereas, holding that a *prima facie* case against petitioners, for the offence of cheating is made out, is hereby upheld. Anything stated herein shall not be construed as an expression on merits at trial.

19) Let the parties, through their Counsel, appear before the District and Sessions Judge-I, Delhi on 20th April, 2009, for assigning the criminal complaint case of respondent No.4 to the court where criminal proceedings under Section 138 of the Negotiable Instruments Act, are pending against respondent No.4, so that they are tried together in accordance with the law.

20) Copy of this order be sent to District and Sessions Judge-I, Delhi, for compliance and be also given *dasti* to both sides.

21) With aforesaid directions, these four petitions stand disposed of.

Sunil Gaur, J.

March 31, 2009

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