

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 540/2010**

% Reserved on: 22nd February, 2010
Date of Decision: 23rd February, 2010

RAJESH YADAV & ANR Appellant
! Through: Mr.Shivashish Gunwal,
Advocate.

versus

\$ STATE & ANR Respondent
^ Through: Mr.Jaideep Malik, APP

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

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

: **V.K. JAIN, J.**

1. This is a petition under Section 482 of the Code of Criminal Procedure for quashing the summoning order dated 23rd February, 2008 in Complaint Case No.1680-A/1 titled as "Asha Ratra vs. Rajesh Yadav and Anr."

2. Quashing of the summoning Order has been sought on the ground that no offence under Section 138 of Negotiable Instruments Act is made out against the petitioners in view of the judgment of the Hon'ble Supreme Court in **Jugesh**

Sehgal Vs. Shamsher Singh Gogi 2009(3) CC Cases (SC) 2004.

3. A perusal of the complaint filed by the respondent under Section 138 of Negotiable Instruments Act, read with Section 420 of IPC, would show that according to the complainant, she sold a built-up property to the petitioners who claimed that about Rs.3 lakhs were due in respect of electricity bills, water bills and house tax charges etc., and also demanded a sum of Rs.10 lakhs for spending on account of expenses in obtaining Completion Certificate from HUDDA. The petitioner also assured the complainant that unutilized amount out of Rs.10 lakhs being taken for obtaining Completion Certificate from HUDDA would be returned to her within three months. On the assurance of the petitioners to return the balance amount to the complainant and on their delivering post-dated cheque dated 27th September, 2009 for Rs.10 lakhs to her, the complainant made payment of Rs.13 lakhs to them and accepted the post-dated cheque of Rs.10 lakhs from them. Thereafter, the petitioners did not respond, despite the complainant trying to contact them. The complainant then presented the cheque to the bank, when it was dishonoured

with remarks “drawer signatures differs”.

4. A perusal of the summoning order dated 23rd February, 2008 would show that the petitioners have been summoned to face trial under Sections 420/468/471 of IPC. They have not been summoned under Section 138 of Negotiable Instruments Act.

5. This is not the case of the petitioners that no offence under Section 420, 468 or 471 of IPC is made out against them, from the allegations made in the complaint. The entire petition is based on the premise that the complaint lacks necessary ingredients of the offence under Section 138 of Negotiable Instruments Act and is, therefore, liable to be quashed. A perusal of the impugned order would show that the case of the complainant before the Trial Court is that the cheque in question was issued from the account of one Kailash Sharma and that petitioner Rajesh Yadav was the person who introduced the opening of that account in the name of Kailash Sharma. If the petitioners delivered a cheque from the account of and using a cheque issued to Kailash Sharma and on the strength of that cheque, they made her part with the sum of Rs.13 lakhs, including Rs.10 lakhs

towards expenses to be incurred in obtaining Completion Certificate from HUDDA, prima facie they would be guilty of cheating punishable under Section 420 of IPC. A dishonest intention on the part of the petitioner would in such a case, be evident from their very act in using a cheque issued to some other person and either signing that cheque themselves or getting it signed by some person other than the holder of the account from which the cheque was issued. This is not the case of the petitioners that cheque in question was signed by Kailash Sharma, holder of the account from which it was issued. This is not their case that the cheque alleged to have been delivered by them to the petitioners, when blank, was issued to them. The cheque in question purports to be signed by one Rajesh. If the petitioner(s) delivered a cheque issued from the account of Kailash Sharma with United Bank of India and either of them signed it or they got it signed from some other person before delivering it to the complainant, the intention to cheat the complainant cannot be disputed. Had the complainant known that the cheque, being delivered to her by the petitioners was issued from the account of Kailash Sharma and not from the account of petitioners, she would

not have accepted the cheque from them.

6. Cheating has been defined in Section 415 of Indian Penal Code. The following are the ingredients of cheating defined in Section 415 of Indian Penal Code:

- “1. Deception of any person.
- 2. (a) Fraudulently or dishonestly inducing that person:
 - (i) to deliver any property to any person, or
 - (ii) to consent that any person shall retain any property, or
- (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.”

7. The above referred ingredients prima facie stand made out from the averments made in the complaint, coupled with the evidence that the account from which the cheque in question was issued, stood in the name of Kailash Sharma and not in the name of either of the petitioners or both of them.

8. Therefore, it cannot be said that no offence is made out from the petitioners from the averments made in the complaint. It is settled proposition of law that while exercising

jurisdiction under Section 482 of the Code of Criminal Procedure, this Court cannot go into truthfulness or otherwise the allegations made in the complaint. For the purpose of such a petition, all the allegations made in the complaint have to be taken as correct and on their face value. Criminal proceedings can be quashed only if taking all the allegations made in the complaint as true and on their face value, no offence against the petitioner is made out.

9. The learned counsel for the petitioners has relied upon the decision of the Supreme Court in Jugesh Sehgal (supra). A perusal of the judgment would show that the petitioners before the Hon'ble Supreme Court was summoned for the offence punishable under Section 138 of Negotiable Instruments Act. The Hon'ble Supreme Court noted that the cheque alleged to have been issued by the petitioners to the complainant was issued from an account pertaining to some other person. The Hon'ble Court also noted that one of the essential ingredients of the offence punishable under Section 138 of Negotiable Instruments Act is that the cheque must have been drawn on an account maintained by the accused. Since the cheque in the case before the Hon'ble Supreme

Court was not issued from the account maintained by the petitioner, it was held that one essential ingredient of offence under Section 138 of Negotiable Instruments Act was not satisfied. The Hon'ble Court did not at all examine the question as to whether any offence punishable under Section 420 of IPC or any other Section of Indian Penal Code was made out against the petitioner or not. In the present case, since the petitioners have been summoned under Section 420/468/471 of IPC and not under Section 138 of Negotiable Instruments Act, the judgment relied upon by them has absolutely no application.

10. This is not the case of the petitioners before this Court that no offence under Section 468 and/or 471 of IPC is made out against them, from the averments made in the complaint and the preliminary evidence produced by them. Since the offence under Section 420 of IPC is prima facie made out against the petitioners, I am not going into the question as to whether offences under Section 468 and/or 471 of IPC are also made out against them or not. The petitioners will be entitled to claim before the Trial Court or before a Superior Court, in appropriate proceedings, that offence under Section

468 and/or 471 of IPC are not made out against them.

For the reasons stated in the preceding paragraphs, I do not find any merit in the petition and the same is hereby dismissed.

(V.K.JAIN)
JUDGE

FEBRUARY 23, 2010
BG/