

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

Judgment reserved on: December 14, 2010
Judgment delivered on: December 16, 2010

+ **CRL.M.C. No. 721/2009 & CRL.M.A. NO.2393/2009(stay)**

MS. ARADHANA VIKRAM SINGH **....PETITIONER**

Through: Ms. Sima Gulati, Advocate with Ms. Dipti
Kathpalia, Advocate & Mr. Sugam Puri,
Advocate

Versus

MR. SANTOSH T.V. & ANR **.....RESPONDENTS**

Through: Mr. Ajay Mehrotra, Advocate for
respondent No.1.
Ms. Fizani Husain, APP for the State/
respondent No.2.

CORAM:
HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

AJIT BHARIHOKE, J.

1. Ms. Aradhana Vikram Singh, the petitioner herein vide this petition under Section 482 Cr.P.C. is seeking following prayer:

- “(a) To summon the record pertaining to the case titled Santosh T.V. Vs. Aradhana Vikram Singh u/s 420 IPC from the court of Sh. Pritam Singh, M.M., New Delhi, where it is now fixed for 17.03.2009; and from the Court of Sh. J.R. Aryan, Id. ASJ the records pertaining to Criminal Revision No.258 of 2006 titled Aradhana Vikram Singh versus State and others;
- (b) To examine the legality, propriety and correctness of the orders dated 08.12.05 AND 07-11-08;
- (c) To quash/set aside the order dated 08.12.05 and order dated 07-11-08 as well as the proceedings and discharge the petitioner.”

2. Briefly stated, facts relevant for the disposal of this petition are that respondent No.1 filed a criminal complaint under Section 200 Cr.P.C. against the petitioner on the allegation that the petitioner came in touch with the complainant through one Rajeev Ozha. The petitioner, after taking respondent No.1 into confidence, requested him to make payment of Rs.6,20,000/- on her behalf to M/s. S.H. Group, Naya Bazar, New Delhi as she was undergoing some financial difficulties. She represented to the complainant that she was a resourceful lady. Believing the representation and assurance given by the petitioner that she would repay the amount to respondent No.1 within a week, respondent No.1 made payment of Rs.6,20,000/- vide pay order No.810443 dated 21.12.93 to S.H. Group, Naya Bazar on behalf of the petitioner. The petitioner executed a promissory note in favour of respondent No.1 on 22.12.93 and in addition to the promissory note, she also issued a cheque for Rs.6,20,000/- in favour of respondent No.1 on 30.12.93 drawn on Central

Bank of India, Panchsheel Park, Delhi and she represented to the complainant that the cheque would get encashed within a week. The cheque, however, on presentation was dishonoured and returned with the remarks "Insufficient Funds." The respondent No.1 immediately contacted the petitioner and protested. The petitioner felt sorry for the inconvenience and asked him to resubmit the cheque. Cheque was resubmitted with the bank on 19.01.94 but it was returned with the remark the account holder has stopped payment. On the aforesaid allegations, respondent No.1 claimed that the petitioner has committed the offence of cheating punishable under Section 417 and 420 IPC.

3. Learned Metropolitan Magistrate, after conducting preliminary inquiry, summoned the petitioner to face trial under Section 420 IPC. After the recording of pre-charge evidence, the trial court heard the parties and directed the charges under Section 417/420 IPC to be framed against the petitioner. Feeling aggrieved of the impugned order of learned M.M. dated 08.12.2005, petitioner filed a revision petition which was dismissed by the learned Additional Sessions Judge vide order dated 07.11.2008.

4. Aggrieved by the order of the revision court, the petitioner has filed the instant petition seeking quashing of the impugned order dated 08.12.2005 of the Metropolitan Magistrate and the order dated 07.11.2008 of the revision court.

5. Learned counsel for the petitioner submitted that impugned orders of learned M.M. as well as the revision court are untenable for the reason that the transaction which is subject matter of the complaint is a purely contractual transaction entered into by the petitioner with the respondent without any dishonest intention. Learned counsel submitted that in the instant case, admittedly a notice under Section 138 Negotiable Instruments Act dated 02.03.94 was served upon the petitioner and in that notice, the respondent has not leveled any allegation of cheating against the petitioner. From this, she has urged the court to infer that the allegations of cheating in the complaint are result of an afterthought. Petitioner has relied upon the judgment of Supreme Court in the matter of **G.Sagar Suri & Anr. Vs. State of U.P. & Ors., 2000(1) Crimes 179 (SC)**. In the said matter, Supreme Court quashed the complaint under Section 406/420 IPC on the ground that the complainant in his complaint under Section 138 N.I. Act had not made any allegation of cheating or misappropriation against the appellant in that case and the complainants also failed to give any explanation for said lapse.

6. In my respectful opinion, the aforesaid judgment is of no avail to the petitioner because it is based upon facts peculiar to that case. In the aforesaid case before the Supreme Court, the complainants had also filed a complaint under Section 138 Negotiable Instruments Act in which they had failed to make allegations pertaining to commission of the offence

under Section 406/420 IPC by the appellant of that case and for that reason, the Supreme Court took an adverse view, more so for the reason that the respondents had failed to give any explanation for non-mention of those allegations in the complaint under Section 138 N.I. Act which was filed earlier in time. In the instant case, the respondent is stated to have served the petitioner with a notice under Section 138 N.I. Act calling upon her to pay the cheque amount. In the notice of demand, the respondent was not expected to give all the details of the transaction entered into with the petitioner. He was only required under law to inform the petitioner that the cheque issued by her was dishonoured and therefore, she should pay the cheque amount within the requisite period. Thus, the absence of allegations regarding cheating in the notice under Section 138 Negotiable Instruments Act served on the petitioner is of no help to the petitioner.

7. It is further submitted by learned counsel for the petitioner that in his cross-examination, complainant admitted that demand draft favouring M/s. S.H. Group was made on 21.12.93 and affidavit CW/1 was made on 22.12.93 whereas cheque is dated 30.02.93 and that complainant admitted that he asked the petitioner to give affidavit CW/1 and she did not give it on her own. From this, learned counsel contended that it is a purely civil transaction and no case under Section 420 IPC is made out.

8. I am not convinced with the argument. Merely because the respondent (complainant) insisted for affidavit by the petitioner, it cannot be concluded that there was no intention to cheat on the part of the petitioner. Otherwise also, we are at the stage of charge and trial is yet to take place. At this stage, the court is not required to meticulously scrutinize the evidence to conclude whether it is true or false. If the evidence on record, prima facie, discloses commission of an offence, the court is justified in framing the charge.

9. Next contention of learned counsel for the petitioner is that the contents of the complaint, pre-summoning and pre-charge evidence do not make out any criminal offence. Learned counsel argued that perusal of the material on record would show that respondent has not made a specific allegation in the complaint that the petitioner dishonestly induced respondent No.1 to pay Rs.6,20,000/- on her behalf to M/s. S.H. Group, Naya Bazar, Delhi. Learned counsel for the petitioner further contended that respondent No.1 even in his testimony as CW1 has not stated about misrepresentation made by the petitioner or inducement on her part which led him to pay Rs.6,20,000/- on her behalf to M/s. S.H. Group. Thus, according to her, no case under Section 420 IPC is, prima facie, made out.

10. I am not convinced with the submission made by learned counsel for the petitioner. On perusal of the complaint, which is not properly

drafted, it transpires that there are allegations in the complaint that the complainant made payment of Rs.6,20,000/- to S.H. Group, Naya Bazar on behalf of the accused because of promise and assurance given by her that she would repay the amount within a week. As per the evidence led on record, the petitioner has given an affidavit Ex.CW1/A dated 22.12.2003 wherein she affirmed that cheque No.03551 drawn on Central Bank of India, Panchsheel Park in the sum of Rs.6,20,000/- in favour of the respondent Santosh would be honoured unconditionally by her bank within seven days. Complainant Santosh appeared as CW1 before the Magistrate and he has supported the allegations in the complaint wherein he stated on oath that keeping in view friendly relations with the petitioner/accused and coming under the impression created by her that she was in genuine need of money and would return the same, he issued a pay order of Rs.6,20,000/- in favour of S.H. Group, Naya Bazar, New Delhi which version, prima facie, show that respondent (complainant) had parted with Rs.6,20,000/- on behalf of the petitioner mainly believing the representation of the petitioner that she would repay the amount within seven days for which she also issued a post dated cheque. The statement of CW1 also finds corroboration from the statements of witnesses Thomas Ibrahim and Capt. Rajiv Ojha, who have categorically stated that at the time of transaction, the petitioner had assured that she would repay the loan money within seven days. In view of the aforesaid prima facie

evidence, I do not find any force in the contention of the learned counsel for the petitioner that this is a case of simple money transaction without any criminal overtones.

11. It is further contended that there is nothing in the complaint or in the evidence to show that petitioner had dishonest or fraudulent intention. From the evidence on record, it prima facie appears that the petitioner induced the respondent to pay Rs.6,20,000/- on her behalf to M/s. S.H. Group on the promise and assurance that the amount would be repaid within a week and she also issued a cheque of Rs.6,20,000/- in favour of the respondent. The said cheque, on presentation, was dishonoured with the remarks "Insufficient Funds." Thereafter, on second presentation with drawee bank, it was dishonoured with the remarks "stop payment." The act of the petitioner in stopping the payment of cheque, if considered in the light of the earlier transaction, prima facie gives an impression that she had dishonest and fraudulent intention of cheating the respondent.

12. Learned counsel for the petitioner also argued that there is nothing on the record to show that the amount paid by respondent No.1 to M/s. S.H. Group was against some consideration already received by the petitioner, therefore, there is no evidence to show that the petitioner obtained wrongful gain from the transaction. This contention is totally misconceived. The fact remains that the draft of Rs.6,20,000/- was given

to M/s. S.H. Group by the respondent on behalf of the petitioner at her instance. This, obviously, has caused wrongful loss to the respondent, as such it cannot be said that the offence of cheating is not, prima facie, made out.

13. In view of the above, I am of the opinion that the petitioner has not been able to make out a case for interference under Section 482 Cr.P.C. in the trial proceedings.

14. The petition as well as the pending application is accordingly dismissed.

(AJIT BHARIHOKE)
JUDGE

DECEMBER 16, 2010

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