

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

+ **Crl.M.C. No.1753/2007**

% *Judgment reserved on :25th July, 2011*
Judgment delivered on:1st September, 2011

WHITE METALS P. LTD. & ORS. Petitioners
Through: Mr. H.L. Tikku, Sr. Advocate
with Mr. Naveen Chawla, Advocate.

versus

KANIKA METALS P. LTD. Respondent
Through: Mr. S.S. Tomar, Advocate.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

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

SURESH KAIT, J.

1. The petitioners have filed the present petition under Section 482 Cr.P.C. seeking quashing of the Criminal Complaint Case No. 145/1 of 2003 filed by the respondent/complainant under Section 406 and 420 Indian Penal Code, 1860, 1960 against them and further seeking

Crl.M.C.No.1753/2007

Page 1 of 29

quashing of order dated 17.02.2007, whereby, summons were issued by the learned Metropolitan Magistrate, against the petitioners.

2. Upon receiving the aforesaid complaint along with an accompanying application under Section 156(3) of Cr.P.C., the learned Metropolitan Magistrate vide order dated 16.08.2003, issued notice to SHO to investigate the case.

3. In pursuance of the above-stated orders of the learned Metropolitan Magistrate, the concerned SHO filed its report stating that no cause was made out against the petitioners/accused persons. However, on 02.11.2004, the learned Metropolitan Magistrate ignored the reports of the investigation agency and directed the complainant to lead pre-summoning evidence.

4. The complaint case as stated above was filed on the premise alleged as under:-

(i) That on 25.02.2003, the complainant/respondent deputed his employee, namely Sh. Pankaj Chauhan, to go to

the premises of the petitioner No.1/accused No.1 and collect the bill and pay the cheque as payment thereof.

(ii) Towards the payment of the said bill, the respondent/complainant alleged though falsely that it had issued a cheque bearing No.891914 drawn on Oriental Bank of Commerce, Karol Bagh, New Delhi, the column of consideration and the date were left blank for the reasons that the exact value of the goods supplied were not known to the respondent/complainant at that time.

(iii) That Sh. Pankaj Chauhan, employee of the respondent/complainant visited the shop of petitioner No.1/accused No.1 on 25.02.2003 and a bill NO.CM 002/02141 for a sum of ₹ 62,115/- was issued and signatures of Sh. Pankaj Chauhan was obtained on the duplicate bill by the petitioners.

(iv) That as Sh. Pankaj Chauhan tried to fill the cheque in the sum of ₹ 62,115/-, the same was snatched by petitioner No.4/accused No.4 and kept with him with the remarks "We will talk first with sh. Praveen Kapoor, Director of the

Complainant Company, who has telephoned two minutes ago regarding rate of material then we will fill up the cheque and present the same with the Bank.”

(v) On enquiry, the Petitioners No.2 to 4/accused No.2 to 4 informed the complainant that the cheque bearing No.891914 has been lost or misplaced and asked that the complainant should issue a fresh cheque in the sum of ₹ 65,000 since the value of the bill has been changed from ₹ 62,115 to ₹ 65,000. The respondent/complainant believed the petitioners/accused persons and issued another cheque bearing No.932659 on 21.04.2003 in the sum of ₹ 65,000 drawn on Standard Chartered Bank, Karol Bagh Branch, New Delhi for clearing the bill.

(vi) The respondent/complainant received a demand notice dated 30.06.2003 under Section 138 of the Negotiable Instruments Act from petitioner No.1/accused No.1, whereby a demand of ₹ 6,06,405/- was made on the ground that cheque No.891914 dated 18.06.2003 issued towards payment of the outstanding amount has been dishonoured.

(vii) The cheque in question was entrusted in a blank condition i.e. amount and date was not filled.

5. Mr. H.L. Tikku, Ld. Senior Advocate appearing for petitioners contended that the aforesaid complaint is completely false, frivolous, devoid of truth and without any cause of action, much less rather is a malafide act on the part of the respondent/complainant to implicate the petitioners/accused persons in false, malicious and unwarranted criminal case for the reasons mentioned below:-

(i) As on 01.04.2003, the principal amount outstanding against the respondent/complainant in the book of accounts of Petitioner No.1 amounted to ₹ 6,65,634.97.

(ii) The respondent/complainant in discharge of its aforesaid liability gave a post-dated cheque dated 18.06.2003 of ₹ 6,06,405/- in favour of Petitioner Nof.1 but upon presentation, the same was returned unpaid by the bankers for the reason "Exceeds Arrangement".

(iii) Pursuant to dishonour of cheque, the Petitioner No.1 Company issued a demand notice dated 30.06.2003 to the respondent Company and its Director, Sh. Praveen Kapoor, which was duly served. Since the demand was not complied with, the petitioner No.1 Company/complainant Company filed a complaint being Complaint No.2097 of 2003 under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 and Section 420 of Indian Penal Code, 1860, against the respondent Company and its Directors.

(iv) The respondent/complainant in order to wriggle out from its aforesaid liability filed a complaint case bearing No.145/1 of 2003 against the petitioners to pressurise them and further to withdraw the complaint under Section 138 of the Negotiable Instruments Act and, therefore, the aforesaid complaint is an afterthought besides being wreck with vengeance and malafide, which is evident from the order dated 30.07.2009 of this Court wherein, the statement of Id. counsel for the respondent was recorded that the said case set up by the respondent/complainant in his complaint is his

defence under Section 138 of the Negotiable Instruments Act.

(v) Pursuant to the order dated 16.08.2003 passed by the learned Metropolitan Magistrate, the SHO of Police Station Nabi Karim conducted the investigation under Section 156 (2) Cr.P.C. and file the report stating that the Petitioner No.2/Accused No.2 has initiated the proceedings under Section 138 of the Negotiable Instruments Act besides the matter being civil in nature and related to business transactions.

6. The learned ACMM passed the order dated 02.11.2004 as under:-

“I have been taken through the report. I have also seen the allegations levelled in the complaint. In view of the submissions raised and the allegations made in complaint, report submitted by investigating agency is ignored and also direct the complainant to lead evidence. Put up on 27/01/05 for C.D. Steps be taken accordingly.”

7. Thereafter, the learned Metropolitan Magistrate summoned the petitioners No.2 to 4/accused No.2 to 4

holding that, prima facie, cause under Section 406/420/120B Indian Penal Code, 1860 was found to be made out against them.

8. It is further submitted by the Id. Senior counsel for the petitioners that the Director of the respondent Company, namely, Sh. Praveen Kapoor, himself changed the date of cheque bearing No.891914 from 24.02.2003 to 18.06.2003 and appended his signature thereon as is apparent from the cheque itself. The fact is that the complainant did not lodge any complaint on 25.02.2003, the date on which the complainant alleges the cheque bearing No.891914 was snatched.

9. The complainant alleged that the accused have received the payment qua bill No.CH002/02141 by two different cheques, firstly; by cheque No.891914 and secondly; by cheque No.932651 for ₹ 65,000.

10. Id. counsel for the petitioners submits that the aforesaid statement is palpably false for the reasons that if Cheque No.891914 drawn on Oriental Bank of Commerce,

Karol Bagh, New Delhi was paid according to the complainant against bill No.CH002/02141 dated 25.02.2003, no occasion arose to the complainant to issue second cheque No.932651 on Standard Chartered Bank for ₹ 65,000 on 18.04.2003.

11. It is further submitted that a photocopy of the cheque bearing No.891914 at page 46 of the petition, which was alleged to be blank, upon alteration of the date is signed by the Director on 18.06.2003. The cheque firstly according to the complainant was blank as to date suddenly shows date as 24.02.2003 and corrected to 18.06.2003 as signed by the Director. Thus, it is obvious that the story set up in the complaint is utterly false, in fact trotted out to find cause to complain.

12. Apart from that, the complaint suffers from inherent factual as well as legal contradiction for the reasons that at one place in the complaint, it is alleged that the cheque in question was “snatched” by the petitioner No.4, whereas, in the other place, it is stated that the same was “entrusted”.

It is submitted that the acts of “snatching” and “entrusting”
Crl.M.C.No.1753/2007

are poles apart and the same cannot take place in one transaction as one is illegal and the other is a legal act. Therefore, the complaint is vague and intrinsically improbable.

13. It is further submitted by the Id. Senior Counsel for the petitioner that neither the essential ingredients of Section 420 nor Section 406 Indian Penal Code, 1860 are fulfilled. The two main ingredients of Section 420 Indian Penal Code, 1860 i.e., dishonest and fraudulent intention at the time of making promises or representation are missing in the complaint in question as it is the case of the respondent/complainant that it had deputed its employee, Sh. Pankaj Chauhan, to go to the premises of the petitioner No.1/accused No.1 to collect the bill and pay the cheque as payment thereof. Apparently, the respondent/complainant was neither induced to pay nor any representation was made in that regard. It is submitted that if the intention to cheat has turned up later on, the same cannot amount to cheating.

14. In support of the above argument, Id. counsel for the petitioner has relied on a judgment of the Supreme Court in *Crl.M.C.No.1753/2007*

M.A.A. Annamalai Vs. State of Karnataka & Another JT

2010 (8) SC 679, wherein in paragraphs 21,22, 29 to 33, the Supreme Court held as under:-

“21. The learned Counsel for the appellant submitted that, apart from the affidavit of respondent No. 2, no case under Section 420 IPC is made out against the appellant. The primary requirement to make out an offence of cheating under Section 415 punishable under Section 420 IPC is dishonest/fraudulent intention at the time of inducement is made. In order to appreciate the controversy in proper perspective, we deem it appropriate to reproduce Section 415 IPC. The same reads as under:

415. Cheating.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived 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, is said to "cheat".

22. Two main ingredients of Section 420 IPC are dishonest and fraudulent intention. The Indian Penal Code has defined the word "dishonestly" in Section 24 IPC. Section 24 IPC reads as under:

24. Dishonestly - Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

29. The appellant, in order to strengthen his stand, has placed reliance on a numbers of judgments of this Court. Reliance has been placed on the case of ***Hira Lal Hari Lal Bhagwati v. CBI, New Delhi (2003) 5 SCC 257***. In this case, the Court has observed that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his failure to keep promise subsequently, such a culpable intention right at the beginning cannot be presumed.

30. Reliance has also been placed on another case between ***Uma Shankar Gopalika v. State of Bihar and Anr. (2005) 10 SCC 336***, in which this Court observed that it is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating.

31. The learned Counsel for the appellant also relied on the case of ***S.V.L. Murthy etc. v. State represented by CBI, Hyderabad (2009) 6 SCC 77***, in which this Court observed as under:

41. An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

(i) deception of a person either by making a false or misleading representation or by other action or omission;

(ii) fraudulently or dishonestly inducing any person to deliver any property; or

(iii) to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit. For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Penal Code can be said to have been made out.

32. In ***Vir Prakash Sharma v. Anil Kumar Agarwal (2007) 7 SCC 373***, this Court observed as under:

13. The ingredients of Section 420 of the Penal Code are as follows:

(i) Deception of any persons;

(ii) Fraudulently or dishonestly inducing any person to deliver any property; or

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit. No act of inducement on the part of the appellant has been alleged by the respondent. No allegation has been made that

he had an intention to cheat the respondent from the very inception.

33. This Court in ***Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors. (1998) 5 SCC 749*** observed as under:

28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

15. Ld. Senior Counsel for the petitioners further submitted that simultaneously the essential ingredients for establishing an offence of criminal breach of trust defined in Section 405 Indian Penal Code, 1860 has not at all been fulfilled in the

complaint in question. Entrusting the property and dishonest misappropriation or conversion, thereof, are the two essential ingredients of the offence of criminal breach of trust, which are not fulfilled in the case at hand as the cheque in question was admittedly issued in the name of the petitioner No.1 Company (only the columns of date and amount was left blank) by the respondent/complainant Company as the same belonged to petitioner No.1 and not to the respondent/complainant and, therefore, the question of dishonest misappropriation or conversion does not arise.

16. In support of the above arguments, Id. counsel for the petitioners has relied upon a judgment of the Supreme Court in ***Rashmi Kumar (Smt.) Vs. Mahesh Kumar Bhada (1997) 2 Supreme Court Cases 397***, wherein in para 13 it has been held as under:-

“13. Thus when the wife entrusts her stridhana property with the dominion over that property to her husband or any other member of the family and the husband or such other member of the family dishonestly misappropriates or converts to his own use that property or wilfully suffers any other person to do so, he commits criminal breach of trust. The essential ingredients for

establishing an offence of criminal breach of trust as defined in Section 405 and punishable under Section 406, IPC with sentence for a period upto three years or with fine or with both, are: [i] entrusting any person with property or with any dominion over property; [ii] the person entrusted dishonestly misappropriating or converting to his own use that property; or dishonestly using or disposing of that property or wilfully suffering any other person so to do so in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract made touching the discharge of such trust. The expression "entrustment" carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Entrustment is not necessarily a term of law. It may have different implications in different contexts. In its most general significance, all it imports is handing over the possession for some purpose which may not imply the conferment of any proprietary right therein. The ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. In **Pratibha Rani's case**, the majority has extensively considered the words "entrustment" of and "dominion" over the property. All the case law in that behalf was exhaustively considered obviating the necessity to tread once over the same. In order to establish entrustment of dominion over the property, both the majority and minority relied on in particular the judgment of this Court in **Velji Raghavji Patel v. State of Maharashtra (1965) 2 SCR 429** wherein it was held that in order to establish entrustment of

dominion over the property to an accused person, mere existence of that person's dominion over the property is not enough. It must be further shown that his dominion was the result of entrustment. The question therein pertained to the entrustment with the dominion over the partnership property by one partner to the other. It was held that the prosecution must establish that the dominion over the assets or particular assets of the partnership was by a special agreement between the parties. The property of the partnership being a partnership asset, every partner has a right to or a dominion over it. It was held that special agreement was necessary to constitute an offence of criminal breach of trust defined under Section 405, IPC, In view of the finding that stridhana property is the exclusive property of the wife on proof that she entrusted the property of dominion over the stridhana property to her husband or any other member of the family, there is no need to establish any further special agreement to establish that the property was given to the husband or other member of the family. It is always a question of fact in each case as to how property came to be entrusted to the husband or any other member of the family by the wife when she left the matrimonial home or was driven out therefrom. No absolute or fixed rule of universal application can be laid down in that behalf. It requires to be established by the complainant or the prosecution, depending upon the facts and circumstances of the case, as to how and in what manner the entrustment of the stridhana property or dominion over her stridhana came to be made to the husband or any other member of the family or the accused person, as the case may be. We are in respectful agreement with the majority view in **Pratibha Rani's** case and consequently requires no reconsideration."

17. He further submitted that the legal position is as such that the offences of criminal breach of trust and cheating cannot take place and/or be committed simultaneously, as in the former offence the dishonest intention to misappropriate the entrusted property develops after such entrustment while in the latter offence, the dishonest intention to induce must be present since beginning. The aforestated legal elements constitutes a different between the two said offences and also proves that the same cannot be committed simultaneously. Therefore, the complaint in question suffers from vice of ambiguity and mutual contradiction.

18. Ld. counsel for the petitioners further submitted that in the facts and circumstances, it is manifestly clear that the learned ACMM neither took all relevant facts and circumstances into consideration nor the judicial pronouncement before issuing process thus paving way for the respondent/complainant to use the process as an instrument to unleash vendetta to harass the petitioners.

19. He further submitted that admittedly, the respondent/complainant itself did not disclose commission of any offence to make out a case against the petitioners. There is sufficient material on record to show that the criminal proceeding has been maliciously instituted with an ulterior motive for wrecking vengeance on the petitioners due to private grudge. In this connection, Id. counsel for the petitioners has placed reliance on a judgment of the Supreme Court in ***State of A.P. Vs. Gourishetty Mahesh & Ors. 2010 (6) SCALE 767***, wherein in para 12 it was held as under:-

“12. While exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge/Court. It is true that Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, other wise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings about its closure without full-fledged enquiry. Though High Court may

exercise its power relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or 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 or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in. Though the powers possessed by the High Court under Section 482 are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. We make it clear that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers under Section 482."

20. Ld. counsel for the petitioner also submits that in the statement of the counsel for the respondent recorded by this Court on 30.07.2009, the same reads as under:-

“Learned counsel for the respondent has pointed out that the case set up by him in the complaint is his defence in the Section 138 of the Negotiable Instrument Act.

It is, therefore, made clear that pendency of the present case shall not come in the way of the trial court adjudication upon the petitioners’ complaint under section 138 of the N.I. Act.

Needless to say the case of both parties shall be considered by the Ld. trial court.’

21. Ld. counsel for the petitioners has further clarified that if the petitioners had snatched the cheque in question from the employee of the respondent Company firstly, why no complaint was lodged, secondly, if presumed it was snatched then also snatching is not an offence in Indian Penal Code, 1860. He further clarified that on 24.02.2003 when the respondent alleges to have issued the cheque, there was no amount in his account. He further submitted that the respondent had filed a complaint after a gap of eight months.

22. On the other hand, Id. counsel for the respondent submitted that the cheque for a sum of ₹ 6,06,405 bearing No.891914 was issued on 24.02.2003, whereas, the petitioner had filled up the date as 18.06.2003. He left that cheque because he had business dealings with the petitioners.

23. Id. counsel for the respondent further submitted that as is admitted by Sh. Rakesh Kapoor, when examined as CW-1, in cross-examination stated that it is correct that on 25.02.2003, goods worth ₹ 62,115 were supplied to accused through his servant Sh. Pankaj Chauhan. It is correct that on the said date, delivery of goods were made to Sh. Pankaj Chauhan. It is further correct that that Sh. Pankaj Chauhan handed over the cheque bearing No.891914 drawn on the Oriental Bank of Commerce, Karol Bagh, New Delhi to him on the said date bearing seal and signature of Sh. Parveen Kapoor, Director of the respondent Company/Kanika Metals. It is also correct that the name and amount are in two different handwritings. Voluntarily said name was filled up by accused and the amount was filled up by them and this

was as per the regular practice. It is correct that cutting on date has been made by them. Voluntarily he further stated that the signatures were put by the accused, thereafter. The signatures were not put in his presence. The signatures on cutting were made by accused after delivery of goods but he cannot say the date. After he received the cheque, Sh. Parveen Kapoor came to his shop but he cannot tell the date exactly. Voluntarily said, he came twice and once even brought his son. He further stated that it was filled up as practice.

24. The Id. counsel for the respondent further submitted that when CW-1, Sh. Rakesh Kapoor, was further cross-examined, he stated that it is correct that between 09.11.1998 and 27.09./2001, no transaction took place with accused. He admitted that it is wrong to suggest that after 27.09.2001, except disputed transaction, cheques have been issued for all other transactions. He also admitted that it is wrong to suggest that the dispute here pertains to transaction only of 25.02.2003 and voluntarily stated that it is carried forward as well. In his cross-examination he said

that did not receive reply dated 08.07.2003 from accused Sh. Praveen Kapoor. The address on AD Card (Mark A) belonged to him but did not bear his signatures. It is correct that he had not filed any civil suit or issued any legal notice after 1998 for recovery. In his cross-examination it was recorded that he could not say if on 25.02.2003, Sh. Pankaj Chauhan, servant of the accused had come to his shop to receive material. It is correct that the rates of his material vary from day-to-day in market and weight of packets supplied also varies. He did not admit or deny that Sh. Pankaj Chauhan had got cheque against the material taken on 25.02.2003 for that he had got cheque which was not filled up as amount was to be filled up on the basis of rate and quantity.

25. Ld. counsel for the respondent further submitted that the scope of Section 482 Cr.P.C. and powers of this Court require the essential ingredients as under;-

(a) whether the allegations in the FIR/complaint taken at its face value and accepted in their entirety do not constitute the offence alleged.

(b) injustice which comes to light should be of grave and not trivial in character and should be palpable and clear and not doubtful.

(c) there exists no other provisions of law by which the party aggrieved could have sought relief.

(d) the evidence, which is sought to be relied upon, is not sufficient which may convict the petitioners even if the complaint is allowed to go for a full dress trial.

26. It is further submitted by Id. counsel for the respondent that the petitioners did not approach the learned Metropolitan Magistrate and seek their discharge after satisfying the learned Metropolitan Magistrate that the complaint lodged by the respondent do not constitute any offence and it is a counter-blast. The criminal complaint under Section 138 of the Negotiable Instruments Act filed against the respondent, has been ignored by the petitioners and the petitioners have chosen to approach this Court under Section 482 Cr.P.C.

27. After hearing both the parties, it emerges the disputed questions of facts in the instant case. Most important question is, whether, cheque No.891914 was issued on 24.02.2003 or on 18.06.2003 or that the intention of respondent was to issue a cheque and fill it as per the bills raised for the goods purchased on 25.02.2003 and/or which was given in lieu of the alleged claim of ₹ 6,06,405/-. It is also disputed question of fact, which needs determination as to, whether, there was any running account in between the parties. This is not the forum, where, the documentary evidence can be looked into. Prima facie, suggest that the respondent has not acknowledged its debt/liability in the sum of ₹ 6,06,405 or any other amount on 18.06.2003 or any time prior to thereto. More so, the respondent has filed a counter-affidavit, along with it the cross-examination of Sh. Rakesh Kapoor, one of the Directors of the petitioner No.1 Company, who has admitted the facts as discussed above.

28. Prima facie, it seems that the cheque in question has been illegally and fraudulently filled up, in much higher amount than was to be filled up on 24.02.2003. It has been

proved through cross-examination of Sh. Rakesh Kapoor, one of the Directors of the petitioner no.1 Company that the value of goods supplied was received by the petitioner by another cheque in the sum of ₹ 65,000/- in the month of April, 2003 by giving an impression to the respondent that the cheque issued on 24.02.2003 has been misplaced. It is also denied that the cheque has been given the date of 18.06.2003 in the sum of ₹ 6,06,405 by the petitioner.

29. It is also revealed from the statement of CW-2, Sh. Laxmi Narayan that in the month of February, March and April, 2003, there was sufficient amount for clearance the cheque dated 24.02.2003 in the sum of ₹ 62,115. Had the respondent received the amount higher than ₹ 6,06,405/- in its account on 18.06.2003, that money would definitely pass over to the petitioners from the account of the respondent for any liability or fault on the part of the respondent. Such act on the part of the petitioners is not only an act of criminal breach of trust or cheating, also act of forgery committed to fabricate false and frivolous documents so as to gain undue advantage for no fault on the part of the

respondent but simply to have wrongful gains by the petitioners and to cause wrongful losses to the respondent.

30. In addition, on enquiry, the petitioners No.2 to 4/accused No.2 to 4 informed the complainant that the cheque bearing No. bearing No.891914 has been lost or misplaced and asked further that the respondent/complainant should issue a fresh cheque in the sum of ₹ 65,000 since the value of the bill has been changed from ₹ 62,115 to ₹ 65,000. The respondent/complainant believed the petitioners and issued another cheque bearing No.932659 on 21.04.2003 in the sum of ₹ 65,000.

31. While exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon any enquiry whether the evidence in question is reliable or not, or whether on a reasonable appreciation of it accusation would not be sustained. This is the function of the trial judge/court. At the same time, Section 482 of the Code is not an instrument to the accused to short-circuit a prosecution and brings about its closure without full-fledged enquiry.

32. The High Court, otherwise, to secure the ends of justice, the power should be exercised sparingly. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution.

33. In view of the above discussion, and keeping in view the facts and circumstances of the case, in my opinion, there is no merit in the petition.

34. Accordingly, Crl.M.C. No.1753/2007 is dismissed.

35. No order as to costs.

SURESH KAIT, J

September 01, 2011
Vk/RS