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HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 623 OF 2014

Smt.Bhavna Singh W/o Shri Manoj Singh Aged About 35 Years R/o House No. 114/3A, Maitri Nagar Risali, Bhilai, PS Newai, Revenue Tah. and Distt. Durg C.G.

… Petitioner

Versus

1. Smt. V. Prabha Rao W/o Shri V.K. Rao Aged About 50 Years R/o Quarter No. 2D, Street No. 18, Sector - 6, Bhilai Nagar 490006, Ps Bhilai Nagar, Revenue Tehsil and Distt. Durg C.G.
2. Branch Manager ICICI Bank Ltd. Office At 35, 36, 37 Commercial-Cum-Residential Complex, Nehru Nagar (East) Bhilai - 490020 (C.G.).
3. Director General of Police Chhattisgarh Raipur, Office At, Police Head Quarters, City - Raipur C.G. Pin Code 492001.

… Respondents

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CRIMINAL MISC. PETITION NO. 624 OF 2014

Smt. Bhavna Singh W/o. Shri Manoj Singh Aged About 35 Years R/o. House No.114/3A, Maitri Nagar Risali, Bhilai, P.S. Newai, Rev. & Civil Distt. Durg (C.G.)

… Petitioner

Versus

1. Smt.V.Prabha Rao W/o. Shri V.K.Rao Aged About 50 Years R/o. Qtr.No.2D, Street No.18, Sector-6, Bhilai Nagar-490006, P.S. Bhilai Nagar, Distt. Durg (C.G.)
2. Branch Manager ICICI Bank Ltd. Office at 35,36,37 Commercial-Cum Residential Complex, Nehru Naga (East) Bhilai 490020 (C.G.)
3. Director General of Police D.G.P. Of C.G. Raipur, Office At Police Head Quarter, City Raipur (C.G.) 492001.

…...Respondents

For Petitioner	:	Shri VG Tamaskar, Advocate.
For Respondent No.1	:	Ms. Fouzia Mirza, Advocate.
For Respondent-State	:	Shri B Gopa Kumar, Deputy Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/07/2016

1. By this common order, CrMP Nos. 623 and 624 of 2014 are being disposed of as common facts & issues are involved in both the petitions, leading case of which is Cr.M.P. No.623 of 2014.

2. The only difference between the two is that the matter pertains to two separate cheques which were allegedly issued by the petitioner in favour of the respondent No.1-complainant and the complainant thereby have instituted two separate criminal complaint cases against the petitioner on the dishonour of the respective cheques. All other facts and details are the same.

3. Both the petitions have been preferred seeking for quashment of the criminal complaint case Nos.1817 of 2014 and 1115 of 2014 respectively pending before the court of Judicial Magistrate First Class, Durg (for short, JMFC).

4. Facts in brief relevant for adjudication of both the petitions are that, a complaint case has been filed by the respondent-complainant before the court of JMFC, Durg under the provisions of Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (for short, the N.I. Act). In the said complaint, it is alleged by the complainant that the present petitioner had issued two cheques of ICICI Bank bearing Cheque Nos.500481 & 500482 amounting to Rs.2,00,000/- and 1,50,000/- respectively. Later on, the complainant had deposited the said cheques at her Bank i.e. State Bank of India, Rajnandgaon Branch for payment. However, on 04.02.2014 an intimation from the said Bank was received that the cheques could not be honoured on account of insufficient funds. Later on, the complainant took all necessary steps as is required under the provisions of N.I. Act. to get the cheques honoured. Finally, when the present petitioner did not pay the said amount, the complaints were filed before the JMFC, Durg.

5. After due verification of the contents of the complaint, the court below registered criminal case Nos.1817 and 1115 of 2014 and ordered for issuance of summons to the petitioner and thereafter registered the said criminal complaints. It is this issuance of summons and registration of complaint which was served upon the petitioner has been assailed by the petitioner through these petitions under Section 482 of Cr.P.C.

6. Initially this court while entertaining the petitions on 21.07.2014 had granted interim protection staying the further proceedings before the court below. Today, with the consent of the parties, both the petitions were taken up for hearing finally.

7. Learned counsel appearing for the petitioner submits that he confines his argument on the solitary ground that the court below did not care to verify whether the cheques were issued to the respondent by the petitioner and the bank account of which the cheques were issued was infact the account of the petitioner or not.

Counsel for the petitioner further relied upon Ex.P/2 filed in the case which was a letter issued by the ICICI Bank to whom soever concerned certifying that the said bank account infact was in the name of one Manoj Kumar Singh and the said customer of the bank was doing satisfactory transaction from the said account.

8. According to counsel for the petitioner, infact the respondent is a part of larger conspiracy and playing fraud with the court by not disclosing the correct facts before the court. Further, the respondent has falsely and fraudulently implicated the petitioner as an accused in the proceedings under Section 138 of N.I. Act. Infact there is no connection of the petitioner with the respondent whatsoever, neither has there been any sort of transaction be it commercially or otherwise which the petitioner had entered into with the complainant. It is further submitted that the complainant has failed to show any legally enforceable debt on the part of the petitioner leading to issuance of cheque in favour of the respondent.

9. It is next submitted that in the absence of any such preliminary investigation made by the Magistrate and registering a complaint in a mechanical manner and issuance of summons to the petitioner forcing him to suffer trauma of entire trial is nothing but a misuse of process of law and also the misuse of judicial system. The court below ought to have taken minimum care to ascertain the fact whether the cheques infact were issued from the bank account of the petitioner and if not, why the person on whose account the cheques have been issued has not been made as an accused person or why a case was not proceeded against the person whose cheques have been allegedly used by the petitioner. Thus, prayed for quashment of entire criminal trial itself. It is also prayed for a direction to make an enquiry against such fraudulent cases being registered at Durg in large numbers including the cases against the petitioner.

10. Per contra, learned counsel appearing for the respondent-complainant opposing the petition as well as the interim order granted by this court submits that the entire case is totally misconceived and deserves to be rejected at the threshold. According to the respondent counsel, all the contentions and submissions put forth by the counsel for the petitioner are all matters of facts which requires evidence to be ascertained and proved. According to him, both the CrMPs, at this initial stage of registration of complaint are not maintainable for the reason that all the courts below were required to have seen at the time of registration of complaint was whether a prima facie case has been brought to its notice in the complaint and whether the statutory requirement as is required, which are to be complied with prior to the filing of the complaint under Section 138 of N.I. Act, has been complied with or not.

11. According to counsel for the respondent, once when the complainant has been able to establish the case before the court below by complying pre requirement of the case under Section 138 of N.I. Act, the court had no other option, but to register a complaint against the offending person. All other facts whether there is a legally enforceable debt or not, whether the cheques issued were valid or not and whether the complaint was false or not, are all facts which could have only been established after the same is thrashed out by way of leading evidence by either side in respect of their respective stand.

12. It is further contended that this court while exercising its power under Section 482 Cr.P.C. should not quash the entire criminal proceedings initiated at the behest of a private complaint only relying upon the document Ex. P/2 which is said to have been issued by the ICICI Bank. Even otherwise, Ex. P/2 would also have to be established by a competent officer of the bank who would confirm the issuance of said letter as also the details of the account holder by entering appearance before the court and producing documentary proof in respect of the same. Thus, prayed for rejection of the petitions and also prayed for vacating the stay order granted earlier by this court.

13. Having considered the rival contentions put forth by the either side and on perusal of record what is explicit from the petitions and the contents is that except for Ex. P/2 which has been relied upon by the counsel for the petitioner on the basis of which the petitioner is seeking for quashment of criminal complaint, there is no other document or for that matter any other piece of evidence by which it could be conclusively held that the allegations which have been made by the complainant are true. In order to ascertain the contention and averment made by the complainant in respect of account holder and the transaction, if any, as alleged by the respondent, primarily the evidence has to be led on either side to establish the same.

14. So far as the law with regard to quashment of criminal complaint at the threshold is concerned, the Supreme court in a series of judgments has held that while considering the case for quashing of the criminal proceedings the court should not "kill a stillborn child" and appropriate prosecution should not be stifled unless there a compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegation have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the Court is whether the un-controverted allegation as made, prima facie establish the offence. At this stage neither can the Court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein. More so, the charge-sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 CrPC.

15. The Supreme Court in **Amit Kapoor Vs. Ramesh Chander and Anr** reported in (2012) 9 SCC 460 has very clearly laid down the principle that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under the Code in relation to quashing of an FIR is circumscribed by the factum and caution afore noticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited. At the initial stage of framing of a charge, the court is concerned not with the proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not be applied at that stage.

16. The Supreme Court in case of **N. Soundaram Vs. P.K. Pounraj and Another** reported in **(2014) 10 SCC 616** in paragraph 13 has categorically held that : -

> “13. It is well settled by this Court in a catena of cases that the power under Section 482 CrPC has to be exercised sparingly and cautiously to prevent the abuse of process of any court and to secure the ends of justice. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should refrain from giving a prima facie decision unless there are compelling circumstances to do so. Taking the allegations and the complaint as they were, without adding or subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the exercise of its power under Section 482 CrPC. An investigation should not be shut out at the threshold if the allegations have some substance.”

17. Considering the ratio of law laid down by the Supreme Court in the above referred judgments, in the opinion of this court, only on the basis of Ex. P/2 certified from the Bank, the criminal complaint by itself cannot be quashed. The court below has not committed any illegality or infirmity if on the basis of averment that are made in complaint, Ex. P/1, and on fulfilling the other requirements under the statues the complaint has been registered.

18. So far as registration of complaint is concerned, all that the court below has to see is whether on the basis of the averment and the document filed with the complaint supported with an affidavit any prima facie case is made out against the accused person or not. In the instant case, there appears to have been made out a prima facie case against the petitioner.

19. For the aforesaid reasons both the petitions being devoid of merit are liable to be and are hereby dismissed.

20. Accordingly, interim relief granted earlier stands vacated.

Sd/-
(P. Sam Koshy)
JUDGE

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