NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr. M. P. No. 67 of 2015

1. Sunil Lalwani S/o late M.J. Lalwani, R/o House No. 303, Second Floor, Ratan Apartment, Avanti Vihar, Raipur, C.G.
2. Smt. Anchal Lalwani W/o Suil Lalwani, R/o House No. 303, Second Floor, Ratan Apartment, Avanti Vihar, Raipur, C.G.
3. Viva the Family Shop near Jainam Readymade Shop, Baijnathpara, Raipur, C.G.

---- Petitioners

Versus

1. Manish Wadhwani S/o K. D. Wadhwani, R/o House No. 7, Muskan House, Anand Niketan, Avanti Vihar, Police Station Telibandha, Distt. Raipur, C.G.
2. State of Chhattisgarh through the Distt. Magistrate/Station House Officer, Police Station Telibandha, Distt. Raipur C.G.

---- Respondents

For Petitioners	:	Shri G. D. Vaswani, Advocate
For Respondent no.1	:	Shri Sunil Otwani, Advocate
For Respondent no.2/State:		Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Order On Board

09/01/2017

The present CrMP has been filed challenging the order dated 06.01.2015 passed by the 2nd Additional Sessions Judge, Raipur in Criminal Revision No. 179 of 2014. By way of the said impugned order the Revisional Court has allowed the revision petition and remitted the matter back to the Magistrate Court with a specific direction for registering the case under Section 420 of IPC against the petitioners herein who are respondents before the Court below and to proceed further in accordance with law.

2. Brief facts relevant for adjudication of the present petition are that the petitioners 1 & 2 in the present case who are running a business of ready-made garments on account of certain need that arose in their business had sought for an amount of rupees 18 lakhs from respondent no.1 which the respondent no.1 because of their acquaintance with the petitioners had provided. It is alleged that against the said loan, the petitioners in turn had given a cheque bearing no.027850 dated 14.11.2012 for an amount of Rs.18,00,000/- of their bank i.e. HDFC bank, Raipur. On 28.06.2013 a complaint case was filed before the Court of Judicial Magistrate First Class, Raipur by respondent no.1 against the petitioners for taking cognizance for the offence under Sections 420 & 406 of IPC. In the said complaint, the complainant-respondent no.1 has stated that the cheque which was issued by the petitioners to him was put for clearance in his bank but the same could not be honoured on account of the fact that the bank account of the petitioners stood closed leading to the filing of the complaint.

3. According to the counsel for the complainant it is an act of cheating and breach of contract on the part of the petitioners and therefore, it is a fit case where they should be prosecuted for the offence under Sections 420 & 406 of IPC.

4. The learned Magistrate after recording of the statement before registration of the complaint and on due perusal of the same vide its order dated 26.02.2014 reached to the conclusion that the contents of the complaint and the statement of the complainant do not disclose the ingredients required for making out an offence under Section 420 of IPC or for that matter under Section 406 of IPC. Thus, rejected the complaint.

5. This order dated 26.02.2014 was assailed by the complainant by way of a revision before the second Additional Sessions Judge, Raipur in Criminal Revision No.179 of 2014. The Revisional Court however, taking into consideration the submissions of the parties reached to the conclusion that the act on the part of the petitioners in so far as closing of the bank account maintained in HDFC bank, Raipur from which the cheque was issued to the complainant is an act of cheating. According to the Revisional Court, when the petitioners had issued a specific cheque from a particular bank, they were duty bound to maintain the said account till the amount is finally realized. Having not done so and on the contrary, closure of the bank account itself is a criminal act of cheating on the part of the petitioners which falls within the definition of section 420 IPC. According to the Revisional Court, the petitioners did not intimate the complainant in respect of the closure of the bank account and therefore the act on the part of the petitioners clearly reflects that they never had the intention of repayment of the loan which they had taken from the complainant which also meets the definition of 420 IPC. Thus, the Revisional Court vide impugned order dated 06.01.2015 set aside the order dated 26.02.2014 and remitted the matter back to the Magistrate for reconsideration of the complaint. While remitting the matter back to the trial Court, the Revisional Court has also directed the Magistrate to register the offence against the petitioners under Section 420 of IPC and to proceed further with the matter.

6. It is this order which is under challenge in the present petition.

7. According to the counsel for the petitioners, the order of the Revisional Court is bad in law for more than one reason. First of all, the order of the Revisional Court to the extent of directing for registration of the offence under Section 420 IPC is *per se* bad in law and deserves to be set aside. According to the petitioners, the Court below while exercising the revisional powers can only set aside the order and remit the matter back to the Court below for passing of a fresh order. The Revisional Court cannot dictate and decide as to what would be the offence which has to be registered. Thus, the order of the Revisional Court to that extent bad in law and deserves to be set aside.

8. Counsel for the petitioners submits that even otherwise on merits also the Revisional Court has erred in law in as much as not properly appreciating the evidences which have come on record. According to the counsel for the petitioners, a bare perusal of the complaint itself would disclose that the same lacks the basic ingredients that are otherwise required for making out an offence under Section 420 IPC. The very fact that there is no allegation of any inducement being made at the behest of the petitioners at the time when the respondent no.1 given money to the petitioners itself is sufficient indication that the offence under Section 420 IPC is not made out. Counsel for the petitioner submits that it is not a case of cheating at all by the petitioners. According to him, in case the cheque which was issued by the petitioners to the respondent no.1 could not be honoured on account of the closure of bank account, the natural consequence should have been of issuing a notice to the petitioners by respondent no.1 which in the instant case has not been done and therefore, even without issuing a notice, lodging of the complaint straightway before the Magistrate is nothing but a *mala fide* act on the part of the complainant with ulterior motive and is also a clear case of the misuse of process of law. Counsel for the petitioners submits that the nature of dispute which has been levelled by the complainant-respondent no.1 clearly reflects it to be one of civil nature as there appears to have been some commercial transaction between the two. Therefore, in the event if the petitioners did not repay the amount taken by them from respondent no.1, he could have initiated civil proceedings of recovery against the petitioners. But in order to avoid the litigation and the time which consume in the civil litigation and also to avoid the payment of Court fees while filing a suit of recovery, the respondent no.1 thought it fit for filing of a complaint case against the petitioners as an arm twisting tactics on the part of the respondent no.1 for recovery of the money. He submits that it is a case where the respondent no.1 had initially put the cheque for clearance in his bank on 19.11.2012 which got dishonoured on account of insufficient fund yet the respondent no.1 did not issue any notice to the petitioners neither did he make any effort for realization of the money which he had given to the petitioners and subsequently a complaint case was lodged. He further submits that in the complaint which has been lodged before the Court below the complainant has not disclosed the fact that he had put the cheque for clearance which initially got dishonoured on account of insufficient fund nor has he disclosed as to why he did not chose to prefer a proceeding under Section 138 of NI Act on the cheque getting dishonoured with a remark of insufficient fund. According to the counsel for the petitioners, all these clearly reflect that the ingredients necessary for making out an offence of cheating as defined under Section 420 IPC are missing and therefore the order of the Revisional Court directing for registration of the complaint under Section 420 IPC against the petitioners is bad in law and is not sustainable and prayed for quashment of the same. In support of his contention counsel for the petitioners relied upon the decisions of the Supreme Court in the case of Venkatachalam Vs. State rep. by Inspector of Police 1998 reported in CRI. L.J. 3189 and in the case of Suresh Kumar Gupta Vs. Om Prakash Alipuria reported in 1977 CRI.L.J. 1416.

9. Shri Sunil Otwani, Advocate appearing for the complainant-respondent no.1 on the contrary submits that it is a case where the petitioners have in fact cheated the respondent no.1 in as much as because of the cordial relations between the two and for the business purpose the petitioners had asked for money and the respondent no.1 bonafidely tried to help the petitioners by paying an amount of Rs.18,00,000/-. He submits that against the discharge of the liability of the loan that the petitioners had taken they had issued a cheque of HDFC bank for the amount of rupees 18 lakhs. However, the said cheque got dishonoured firstly on presentation with a remark of insufficient fund. This itself is an act which shows the intention of the petitioners cheating the respondent no.1. According to him, the respondent no.1 did not issue any notice after the cheque was dishonoured on account of insufficient fund on the assurance of the petitioners ensuring for honouring the cheque and when the second time it was presented for clearance, he received an intimation that the account itself got closed. Thus, not once but on the second time also the petitioners showed their intention of cheating the respondent no.1. Counsel for the respondent no.1 further submits that, the petitioners in all fairness should have intimated the respondent no.1 in respect of the closure of the bank account and as to how they would be repaying the amount taken from respondent no.1. In the absence of which the conduct of the petitioners by itself speaks of cheating and therefore the Revisional Court has rightly ordered for registration of the complaint under Section 420 of IPC. According to him, merely because the respondent no.1 did not issue any notice to the petitioners after the cheque got dishonoured firstly on account of insufficient fund and on the second time on account of the bank account itself having been closed, the respondent no.1 would not lose his right of lodging a complaint against the petitioners. According to him, the criminal jurisprudence does not require issuance of a notice to the accused persons before an FIR or a complaint is lodged. He submits that it is a case where the petitioners had a clear intention of cheating the respondent no.1 and therefore they had done this act of initially issuing a cheque from an account which did not have sufficient fund and secondly when it was presented, the account itself was closed. Counsel for the respondent no.1 relied upon the decision of the Supreme Court in the case of Nagpur Steel & Alloys Pvt. Ltd. Vs. P. Radhakrishna alias Rajan and Others reported in 1997 SCC (Cri) 1073. He lastly submits that once when the cheque is got dishonoured on two occasions firstly on account of insufficient fund and secondly the bank account itself being got closed, the respondent no.1 complainant has the option of either initiating proceeding under Section 138 of NI Act or for that matter could have filed a complaint under Section 200 for initiating the criminal case under Section 420 of IPC against the accused persons. Thus, prayed for rejection of the present petition.

10. Having heard the rival contentions put forth on either side and on perusal of the records what is an admitted position is that the petitioners in the present case had issued a cheque bearing No. 027850 dated 14.11.2012 for an amount of rupees 18 lakhs of their bank i.e. HDFC bank, Raipur in favour of respondent no.1. The cheque was first presented for clearance by respondent no.1 at his bank but the same got dishonoured on account of insufficient fund. Though the cheque got dishonoured for insufficient fund, no notice or any proceeding under the provisions of the Negotiable Instrument Act whatsoever was initiated by the respondent no.1. Subsequently, the cheque was again presented for clearance by respondent no.1 but second time also the cheque was dishonoured on account of the fact that the petitioners had closed their bank account and an intimation in this regard was sent to the respondent no.1 by his bankers. Subsequently, a complaint under Section 200 CrPC was filed before the JMFC, Raipur. The JMFC on 26.02.2014 rejected the complaint on the ground that the ingredients to bring home the offence under Section 420 IPC were not reflected from the complaint. It is then that the revision petition was filed which was allowed by the Revisional Court vide its order dated 06.01.2015 directing the JMFC to register the complaint against the petitioners for the offence under Section 420 of IPC and to proceed further. If we look at the order of the Revisional Court passed on 06.01.2015 the operative part of the order reads as under:

> " अतः पुनरिक्षण आवेदन आंशिक रूप से स्वीकार कर विचारण न्यायालय का प्रश्नाधीन आदेश अपास्त किया जाता है और प्रकरण इस निर्देश के साथ विचारण न्यायालय को पुर्नप्रेषित किया जाता है कि वे आरोपीगण के विरूद्ध धारा 420 भा.दं.सं. के अधीन अपराध पंजीबद्ध कर विधि अनुसार कार्यवाही करें। "

It is this direction issued by the Revisional Court which is under Challenge before this Court.

11. To understand the issue involved in the case it would be relevant at this juncture to refer to Section 420 of IPC which for ready reference is being reproduced hereunder:

> "Cheating and dishonestly inducing delivery of property. - Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

A plain reading of the aforesaid provision clearly reflects that the necessary ingredient required for making out an offence under Section 420 IPC would be dishonestly inducing a person to deliver the property.

12. Next it would also be relevant to refer to the contents of the complaint filed before the Magistrate. In Paragraphs 2 & 3 of the complaint, the respondent no.1 has in very categorical term stated that there was a good mutual personal as well as commercial relationship between him and the petitioners. It was also avered in the complaint that the petitioners referring to certain commercial necessity as a matter of loan had demanded an amount of rupees 18 lakhs from respondent no.1 and respondent no.1 had acceded the demand and paid the said amount to the petitioners.

13. From the aforesaid factual matrix what is to be considered is that the respondent no.1 prior to the lodging of the criminal complaint had also presented the cheque for clearance but the same got dishonoured with the tip of insufficient fund. Dishonouring of the cheque for insufficient fund was not acted upon by respondent no.1 nor a single notice was sent or an intimation was given to the petitioners regarding the dishonouring of cheque. At least there is no such document or reference in this regard made in the complaint filed before the Court below. Likewise, second time also when respondent no.1 presented the cheque for clearance and it got dishonoured with a note that the account stands closed, there was no referene of any notice issued by respondent No.1 to the petitioners or any demand notice raised by him against the petitioners. The entire complaint case filed by respondent no.1 is totally silent in this issue. The respondent no.1 straightaway went on lodging a criminal complaint against the petitioners and after the initial formality being complete, the trial Court reached to the conclusion that the ingredients for making out a case under Section 420 of IPC particularly to bring home the act of cheating and dishonesty by virtue of which the complainant was induced to deliver property are missing and accordingly rejected the complaint case. It is this rejection of the complaint which was subjected to challenge before the Revisional Court and the Revisional Court reversed the order of the trial Court.

14. A plain reading of the contents of the complaint itself would reveal that there was a very cordial mutual understanding between the petitioners and the respondent no.1. It is also reflected that the petitioners and the respondent no.1 had commercial transactions between them. But what is essential is that in the complaint itself the respondent no.1 has stated that the petitioners on the garb of some commercial emergency had taken loan from him. The fact that the petitioners had an intention of cheating the respondent no.1 is established from the fact that when the cheque at the first instance was placed, there was no sufficient fund and in all probability, the respondent no.1 must have had a telephonic conversation with the petitioners intimating about dishonouring of the cheque and because of the good faith and understanding between them no notice was issued. The act of dishonesty is further established from the fact that when the cheque was presented for clearance on the second time, by that time the petitioners had already got the account closed. However, the petitioners did not even thought it fit to intimate the respondent no.1 in respect of closing of their bank account of which a cheque of huge amount i.e. 18 lakh rupees was issued by the petitioners in favour of respondent no.1. Now under both the circumstances, the petitioners in good faith ought to have made all efforts to clear the debts of respondent no.1. The intention of the petitioners of cheating was apparent and clear from the first instance itself. The dishonest intention on the part of the petitioners also stands established from the fact that in spite of so much time having been consumed, till date, no effort has been made for clearing the dues to be paid to the respondent no.1. Therefore, it cannot be said that the ingredient necessary for making out an offence under Section 420 was not there.

15. Thus, in the opinion of this Court, there is no infirmity or illegality committed on the part of the Revisional Court in holding that there was prima facie material available in the complaint itself for making out an offence under Section 420 IPC.

16. Accordingly, the present Cr.M.P. being devoid of merit stands dismissed.

Sd/-

(**P. Sam Koshy)**
JUDGE

Bhola