IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 766 OF 2010

Mr. Johnny Raphael,
Aged 58 years,
Legal Consultant for
Induslnd Media & Communication Ltd.,
a company incorporated in India
under the Indian Companies Act, 1956
and having its registered office at
215-G, New Charni Road,
Next to Hinduja College,
Mumbai 400 004 ..Applicant

v/s.

1. Jitendra Dattatraya Ghadegavkar,
   a partner in M/s. In Cable Communications
   having its address at B-24,
   Station Plaza, Station Road,
   Bhandup (West),
   Mumbai 400 078.

2. Senior Inspector of Police,
   Bhandup Police Station,
   Bhandup, Mumbai

3. State of Maharashtra ..Respondents

Mr. Subodh Desai a/w. Mr. Prashant Asher i/b. M/s. Crawford Bayley & Co. for the Applicant.
Mr.,K.V.Saste, APP for the Respondent Nos.2 and 3.

CORAM : A.S.OKA &
SMT. ANUJA PRABHUDESSAI, JJ.
RESERVED ON : 8TH MARCH, 2017.
PRONOUNCED ON: 23rd JUNE, 2017.

JUDGMENT (PER ANJUA PRABHUDESSAI, J.).

1. By this application, filed under Section 482 of Criminal Procedure Code, the applicant has sought to quash and set aside MECR No.1 of 2010 under section 467, 420 and 120-B IPC, registered pursuant to Order dated 18th January, 2010 in Criminal Complaint No. 2/MISC/2010 passed by the learned Metropolitan Magistrate, 53rd Court, Mulund, Mumbai.

2. The applicant is a legal consultant with IndusInd Media and Communications Ltd (hereinafter referred to as "the Company"). The said Company is carrying on business of Cable TV network including supply of programme packages to various cable operators. The said Company had appointed M/s. Inn Cable Communication, a Partnership Firm as one of its distributors. The respondent No.1 and one Suresh Thakur are the partners of M/s. Inn Cable Communication (Hereinafter referred to as "the Partnership Firm").

The said Partnership Firm was responsible to collect the amounts from various operators and forward the same to the Company.

3. In April 2008 the said Partnership Firm stopped working for the said Company. On 23rd September, 2008 the Company deposited cheque dated 1st April, 2008 for an amount of Rs.1,60,00,000/- with their bankers Induslnd Bank Ltd. The Company claims that the Partnership Firm had issued the said cheque in part discharge of its liability. The said cheque was dishonored for the reason "instrument stopped by the drawer'. The Company issued statutory notice to the respondent no.1 as well as to the Partnership Firm and the other partner Mr. Suresh Thakur and subsequently filed a complaint under Section 138 of the Negotiable Instruments Act.

4. The learned Magistrate after considering the statements of the applicant and the Officer of the company's banker, as well as the documentary evidence, by order dated 16th June, 2009 issued process against the Partnership Firm and its partners viz. Mr. Suresh Thakur and the respondent no.1 hereinabove for the offence under Section

138 of the Negotiable Instruments Act. The Respondent no. 1 and the other accused in the said case have challenged the said order by filing revision application before the learned Sessions Judge.

5. On 5.1.2010, the respondent no.1 filed a complaint/application under Section 156(3) Cr.P.C. before the learned Metropolitan Magistrate 53rd Court, Mulund, Mumbai. The respondent no.1 alleged that the Partnership Firm had issued a signed blank cheque bearing no.843267 in favour of the Company as monthly collateral security. The respondent no.1 claimed that in the month of April 2008, the Partnership Firm ended its relationship with the Company and floated a new Company.

6. The Respondent no.1 claimed that the Partnership Firm had issued a letter to its bankers and requested to stop payment of the said cheque. The Partnership Firm had also requested the Company to return the said cheque. The respondent no.1 claimed that the Company without the consent of the partners forged the blank cheque into a valuable security to the tune of Rs.1.6 crores and

presented the same in the bank and upon the cheque being dishonoured, the Applicant filed a complaint against the Partnership Firm and the partners for an offence under Section 138 of the Negotiable Instruments Act.

7. On the basis of the said allegations, the learned Magistrate by order dated 18th January, 2010 issued directions under Section 156(3) of Cr.P.C. Pursuant to the said order, the respondent no.2 registered MECR No.1 of 2010 against the applicant and the others for offences under section 420, 427 r/w. 120(B) of Indian Penal Code, which is sought to be quashed in the present proceedings.

8. The learned Counsel for the applicant has submitted that the proceedings initiated by the respondent no.1 are actuated by malafides and ulterior motive. The said complaint is nothing but a counter blast to 138 proceedings initiated against the respondent no.1 and others. He has submitted that the allegations leveled against the applicant, even if assumed to be true, do not make out any offence under Section 420, 467 and 120B of Indian Penal Code.

He has submitted that continuation of such proceedings would be abuse of process of law.

9. We have perused the records and considered the submissions advanced by the learned Counsels for the respective parties. The Apex Court in plethora of judgments has explained the scope and ambit of the powers of the High Court under section 482 Cr.P.C. In S***tate of Haryana vs. Bhajanlal***[1] the Apex Court has listed the categories of cases when the power under Section 482 of the Code of Criminal Procedure can be exercised by the High Court. The Apex Court in ***Rishipal Singh vs. State of U.P.***[2] after taking survey of the earlier decisions with regard to the scope and object of Section 482 of Code of Criminal Procedure, has held that :

> *" 12. This Court in plethora of judgments has laid down the guidelines with regard to exercise of jurisdiction by the Courts under Section 482 Cr.P.C. In State of Haryana v. Bhajan Lal 1992 Supp(1) SCC 335, this Court has listed the categories of cases when the power under Section 482 can be exercised by the Court. These principles or the guidelines were reiterated by this Court in (1)* Central Bureau of Investigation v. Duncans Agro

[1] 1992 SCC (Cri) 426
[2] (2014) 7 SCC 2015

Industries Ltd. *1996 (5) SCC 592; (2)* Rajesh Bajaj v. State NCT of Delhi *1999 (3) SCC 259 and; (3)* Zandu Pharmaceuticals Works Ltd. v. Mohd. Sharaful Haque & Anr *(2005) 1 SCC 122. This Court in Zandu Pharmaceuticals Ltd., observed that:*

"The power under Section 482 *of the Code should be used sparingly and with to prevent abuse of process of Court, but not to stifle legitimate prosecution. There can be no two opinions on this, but if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of Court, the power under* Section 482 *of the Code must be exercised and proceedings must be quashed". Also see* Om Prakash and Ors. V. State of Jharkhand *3012 (12) SCC 72.*

What emerges from the above judgments is that when a prosecution at the initial stage is asked to be quashed, the tests to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case. The Courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the Court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the Court can exercise the power under Section 482 *Cr.P.C. While exercising the power under the provision, the Courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial Court and dwell into the disputed questions of fact.*

13. In the backdrop of the legal position, well settled by this Court through catena of judgements, we would like to deal with the facts of the present case which lead to filing of the present complaint against the appellant *under* Sections 34, 379, 411, 417, 418, 420, 467, 458 *and* 477 *I.P.C. on the file of the Additional Chief Judicial Magistrate, Ghaziabad.*

10. There can be thus no dispute that the inherent powers conferred on the Court under Section 482 of Cr.P.C., though vast, have to be exercised sparingly and with circumspection to prevent abuse of process of the court or to subserve the ends of justice. It is well settled that the test to be applied by the Court in exercise of these powers is as to whether the uncontroverted allegations in the FIR disclose the essential ingredients of the offence.

11. In the instant case, the applicant is alleged to have committed offences under Section 420, 467 r/w. 120(B) of Indian Penal Code. Hence, before adverting to the facts of the case, it would be advantageous to refer to the provisions and the ingredients of the alleged offences.

12. Section 420 of Indian Penal Code prescribes punishment for an offence of 'Cheating', which is defined under Section 415 of IPC 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”
>
> Explanation: A dishonest concealment of facts is a deception within the meaning of this section.

13. Thus, in order to constitute an offence of cheating, there must be deception of any person, 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.

14. Section 467 of IPC deals with offence relating to offence of

valuable security and the same reads as under:

> "**467. Forgery of valuable security, will, etc.**—Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

15. Thus, the essential ingredient of section 467 is forgery of the document enumerated in the section. The terms 'Forgery' is defined in Section 463 I.P.C. The essential ingredient of Forgery is making a false document as defined in Section 464 of Indian Penal Code. In short, the person is said to have made a false document - (i) if he makes or executes the document claiming to be someone else or authorized by someone else; or (ii) of if he altered or tampered a document; or (iii) the obtained a document by practicing deception, or from a person not in control of his senses.

16. Section 120A defines conspiracy as under:

> " When two or more persons agree to do, or cause to be done,-
>
> (1) an illegal act, or
>
> (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.
>
> provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.
>
> Explanation:- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

17. The essential ingredient of the offence of criminal conspiracy is an agreement between the persons to commit an offence i.e. to do an illegal act or an act by illegal means.

18. Having considered the aforesaid provisions, the question which falls for our determination is whether the uncontroverted averments made in the complaint/application under Section 156(3) Cr.P.C. disclose the essential ingredients of the offences under Section 467,

420, r/w. 120B of the Indian Penal Code.

19. Reverting to the facts of the present case, it is not in dispute that the Partnership Firm had issued a cheque bearing No.843267 in favour of the Company. The said cheque was dishonoured for the reason "instrument stopped by the drawer", and that proceedings for offence under Section 138 of the Negotiable Instruments Act are pending against the Partnership Firm and its partners. The respondent no.1, who is one of the partners had lodged a complaint at Bhandup Police Station alleging that the cheque on the basis of which complaint under Section 138 of Negotiable Instrument Act was filed, was forged by the Company by altering the date from 1.4.2008 to 1.9.2008. In this regard it is relevant to refer to the order dated 17th March, 2010 of this Court (B.R.Gavai, J.) which reads as under :-

> "...
>
> 2. It was basically the contention of the respondent, that the cheque on the basis of which the proceedigns under Section 138 of the Negotiable Instruments Act have been initiated by the present applicant was dated 1.9.2008. However, the date was changed to 1.4.2008.

> 3. I have also perused the oriignal cheque. The original cheque tallies with the cheque which has been produced at page 25 of the paper book.
>
> 4. Primafacie, even the contention of the applicant regarding cheque no.843267 being dt.1.9.2008 also does not appear to be correct. Perusal of Exh.L i.e. letter dt.9.3.2009 addressed to the respondent no.1 by his bankers would show that cheque no.843266 has been cleared on 31st March, 2008 and the cheque no.843268 is cleared on 9.4.2008 , as such the contention of the respondent-complainant regarding cheque no 843267 dt.1.9.2008 appears to be atleast prima facie incorrect.

20. The respondent no.1 had challenged the said order before the Apex Court in SLP No.3671 of 2010. By order dated 2nd August, 2013 the said SLP has been dismissed as withdrawn. We are conscious of the fact that the observations in order dt. 17th March, 2010 were prima facie observations made at the stage of admission. Nevertheless, it has to be noted that the allegations in the complaint/application under Section 156(3) are that the cheque which is the subject matter of 138 proceedings was given as a collateral security. The said complaint/application under Section

156(3) does not state that the Company or the applicant herein had altered or tampered the date of the subject cheque, or that the said cheque was obtained by practicing deception. Similarly, the complaint/the application under Section 156(3) also does not contain the allegations of deception, false or misleading representation and/or fraudulent or dishonest inducement to deliver any property. The only accusation in the complaint/156(3) application is that the Company had filled in the date and the amount in the blank cheque which was issued as a collateral security. Suffice it to say that mere insertion of the date or the amount in a blank cheque or presenting the cheque despite instructions of "stop payment" do not constitute offence of forgery or cheating as defined under Section 463/464 and 420 of the Indian Penal Code.

21. Thus, the uncontroverted allegations made against the applicant even if taken at their face value, do not disclose the essential ingredients either of cheating, forgery or conspiracy. These allegations can at the most be a matter of defence in 138 proceedings, but certainly cannot be the basis for issuing process

under Section 467, 420 and 120B of Indian Penal Code against the present applicant who is only a legal consultant of the Company. In such circumstances, continuation of the criminal proceedings against the present applicant would tantamount to abuse of process of law. Hence, in our considered view this is a fit case to invoke the jurisdiction of Section 482 of Cr.P.C. and to quash MECR No.1 of 2010 and all the further proceedings arising from the said MECR No.1 of 2010 qua the applicant.

22. For the reasons stated above, the application is allowed.

. MECR No.1 of 2010 registered with Bhandup Police Station pursuant to the order dated 18th January, 2010, passed by the of the learned Metropolitan Magistrate's, 53rd Court, Mulund, Mumbai, in Criminal Complaint No.2/Misc/2010 and all further proceedings , if any, arising from the said MECR No.1 of 2010 are hereby quashed and set aside qua the present applicant.

(ANUJA PRABHUDESSAI, J.) **(A.S.OKA, J.)**