

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

% Decided on: 12th April, 2017

+ **CRL.M.C. 1419/2017**

VIVEK KHANNA

..... Petitioner

Represented by: Mr. S.N. Pandey, Mr. N.S.
Hooda, Ms Poonam, Advs.

versus

STATE & ANR.

..... Respondent

Represented by: Ms. Aashaa Tiwari, APP with
SHO Satendra, ASI Ram Karan,
PS Darya Ganj.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CrI.M.A. 5870/2017

Exemption allowed subject to just exceptions.

CRL.M.C. 1419/2017 & CrI.M.A. 5869/2017 (stay)

1. By the present petition the petitioner seeks quashing of FIR No.232/2016 registered under Sections 420/406 IPC at PS Darya Ganj and the proceedings pursuant thereto on the ground that the FIR does not disclose commission of any cognizable offence.
2. The allegations against the petitioner by the complainant who was the head of Finance Department of M/s Shri Adhya Educational Books Pvt. Ltd. are that the petitioner approached the complainant for supply of books worth ₹59 lakhs from the company. For payment against the supplies the petitioner gave pre-dated cheques issued from the account of M/s Khanna Computer

Books Shop maintained at J & K Bank, Chandni Chowk and Central Bank of India, Darya Ganj. Believing that the pre-dated cheques would be honoured, the complainant supplied the books worth ₹58,94,215/-. After receipt of the books when the six cheques were presented, they were dishonoured. Rest of the cheques were not presented in view of the request of the petitioner. When the complainant went to recover the money from the petitioner, it was revealed that the petitioner had sold M/s. Khanna Computer Book Shop and left for unknown place. Thus it is alleged that the petitioner was dishonestly induced to deliver the books and the complainant was cheated for a sum of ₹58,94,215/-. It is further alleged that if pre-dated cheques which were assured to be honoured were not entrusted, the complainant would not have handed over the books to the petitioner. Further the intention of the petitioner was dishonest from the very inception as immediately after receiving the books he sold of the concern and left the property.

3. Learned counsel for the petitioner contends that the allegations in the FIR are of civil dispute and no FIR thereon could be registered. Even otherwise the allegations at best show an offence punishable under Section 138 Negotiable Instruments Act and not a cognizable offence.

4. One of the secondary grievance of the petitioner is that when he applied for anticipatory bail he was asked to deposit ₹15 lakhs which was too onerous and no such condition could be imposed. However, in the petition there is no prayer challenging the order dated 1st April, 2017 granting conditional interim bail to the petitioner and it is on the willingness of the petitioner to compromise the matter and statement made to the affect that the petitioner was ready to pay ₹15 lakhs on or before 10th April, 2017, the order dated 1st April, 2017 appears to have been passed by the learned

Trial Court.

5. Be that as it may, since there is no prayer challenging the order dated 1st April, 2017 this Court need not go into the same and confine itself only whether on the allegations in the FIR the same is liable to be quashed.

6. Supreme Court in the decision reported as 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 State of Haryana Vs. Bhajan Lal laid down the guidelines for quashing of FIR as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an

investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that

too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

7. As noted above, after giving pre-dated cheques the petitioner took the delivery of books for ₹58,94,215/-. It is thus apparent that the petitioner represented that he had sufficient funds. Further the intention of the petitioner being dishonest from the inception can be inferred from the fact that after receipt of the books, the petitioner left the property and was not traceable. Having come to know about the dishonest intention of the petitioner the complainant presented only six cheques and did not present the other cheques. On the allegation in the FIR as noted above, it cannot be held that the present case falls within the ambit of Section 138 Negotiable Instruments Act only and no case for registration of FIR under Section 420/406 IPC is made out.

8. Finding no merit in the petition, the petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 12, 2017
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