

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.69088 of 2018

Arising Out of PS. Case No.-1233 Year-2018 Thana- MUZZFARPUR COMPLAINT CASE
District- Muzaffarpur

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1. RCM Infrastructure Limited having its registered office at 8-2-622/5A/2,2nd floor, Indira Chambers, Avenue-4 Road no.10, Banjara Hills, Police Station-Banjara Hills, District-Hyderabad-500034, Telangana through its authorized representative namely Nemani Rama Chandran, aged about 45 years, son of Nemani Venkata Ramana, resident of 7-34, R.H. Colony, P.M. Palem, near Ramalayam, Police Station- P.M. Palem, District- Visakhapatnam, State- Andhra Pradesh.
 2. K.S. Chowdry, Son of Sri K. Venkateswara Rao, resident of Flat 501, Encon Melody Apartments, Somajiguda, Hyderabad, Police Station- Panja Gutta, District- Ranga Reddy, Telangana, being Managing Director RCM Infrastructure Limited having its registered office at 8-2-622/5A/2,2nd Floor, Indira Chambers, Avenue- 4 Road No. 10, Banjara Hills, Police Station-Banjara Hills, Hyderabad- 500034, Telangana.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Mahtab Alam, Director cum Representative of M/s KBM Engicon Private Limited, KBM Manzil, Opposite-Panchayat Bhawan, Damodarpur, Police Station-Kanti, District-Muzaffarpur, Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar-Advocate Mr. Rajeev Shekhar-Advocate
For the Opposite Party	:	Mr. R. K. Agrawal-Advocate Mr. Ravi Bharuka-Advocate
For the State	:	Mr. Md. Arif-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

5 27-03-2019 Petitioners have challenged the order dated 27.06.2018 passed by the Chief Judicial Magistrate, Muzaffarpur in Complaint Case No.1233(C) of 2018, whereby and whereunder, they have been summoned to face trial for an offence punishable under Section 420 of the I.P.C. as well as



Section 138 of the N.I. Act.

2. Opposite Party No.2/ Complainant filed Complaint Petition No.1233 of 2018 against so many accused persons including the petitioners showing the date of occurrence since 03.10.2017, putting an allegation that there was some sort of business transaction and during course thereof, there was an agreement/ minutes of the meeting dated 03.10.2017, whereby and whereunder the accused persons were to pay outstanding dues appertaining to Rs.335.80 lacs and for that, six post dated cheque of the Account No.050513100000399 were issued by the K. S. Choudhary, out of which, the Cheque No.018227 dated 21.10.2017 issued by Millennium for Rs.1780,000/- has been honoured. The rest cheque bearing No.001230 dated 15.01.2018 of Rs. One crore, Cheque No.001231 dated 15.02.2018 of Rs.6800000/-, Cheque No.001232 dated 15.03.2018 of Rs.5000000/-, Cheque No.001233 of dated 15.04.2018 of Rs.50,00000/- and Cheque No.001234 dated 15.05.2018 of Rs.50,00000/- issued by R.C.M. through its M.D. K. S. Chaudhary, lastly got dishonoured on 13.04.2018 having remark 'fund insufficient' and for that, notice was issued on 21.04.2018. Even then, they failed to pay within the stipulated time of fortnight. Consequent thereupon, the complainant inferred from



their conduct that they entered into with business transaction with dishonest, fraudulent intention since its inception and in order to digest the amount, intentionally issued the cheque knowing full well that it was going to be dishonoured.

3. The learned Chief Judicial Magistrate proceeded with an inquiry under Section 202 of the Cr.P.C. and after completing the same, took cognizance of an offence punishable under Section 420 of the I.P.C. as well as Section 138 of the N.I. Act against all the accused persons by the order impugned out of whom only petitioners have intended to challenge the same under present petition.

4. So many grounds have been raised on behalf of petitioners while assailing the order impugned. The first and foremost happens to be that in worst case, it happens to be breach of contract and that being so, out and out a civil dispute, which intentionally, purposely, malafidely seen given the colour of criminal offence and that being so, the order impugned could not survive. Furthermore, it has also been submitted that from plain reading of the complaint petition, it is evident that there was an agreement amongst so many parties on account of their respective involvement. Furthermore, as the raw material having supplied at the end of the O.P. No.2 was not upto mark, on



account thereof, the executing agency have sustained huge loss. On account of supply of substandard material, the executing firm did not accept and further, directed the complainant/ O.P. No.2 to take back the raw materials, which he intentionally left out and subsequently, the cheques, which were submitted as a surety, were placed before the bank without having proper instruction. That being so, no offence could be said to be made out as the whole transactions suggest that it was the O.P. No.2/ Complainant at fault and for that, he cannot be allowed to drag the petitioners and others under the present litigation.

5. Furthermore, it has also been submitted that unless and until at the initial stage of negotiation, there happens to be presentation under the colour of dishonest as well as fraudulent intention followed with delivery of property, then and then only, an offence under Section 420 I.P.C. would be applicable and for that, referred *Hirday Ranjan Prasad vs. State of Bihar reported in (2000) 4 SCC 168*.

6. Also submitted that no offence under Section 138 of the N.I. Act is made out, because of the fact that the cheques were possessed by the complainant/ opposite party no.2 in lieu of surety and not against payment of the outstanding dues, if any. Consequent thereupon, order impugned is fit to be



set aside.

7. Learned counsel representing O.P. No.2/ complainant as well as learned Additional Public Prosecutor coherently defended the order impugned and submitted that at the present stage only prima facie case has to be seen, which the learned lower Court properly appreciated.

8. That being so, the instant petition lacks merit and is accordingly, fit to be dismissed.

9. After going through the relevant documents as well as hearing rival submissions, it is apparent from the complaint petition itself that there happens to be no disclosure at the end of the O.P. No.2/ complainant that the negotiation having amongst the parties were fraudulent one being surreptitiously influenced. For attracting an offence of cheating the following ingredients are to be taken note of:-

A) There must be inducement.

B) That inducement must lead to promise.

C) At the time of making the promise, the maker of the promise must have an dishonest and fraudulent intention.

D) This promise must lead to delivery of property.



That means to say, to hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise, subsequently such a culpable intention right at the beginning that when he made the promise, cannot be presumed.

10. In *V. Ravi Kumar vs. State rep. by Inspector of Police, District Crime Branch & Ors. reported in 2019(1) PLJR 290 (SC)*, it has been held:-

“33. [*In Vesa Holdings \(P\) Ltd. and Anr. v. State of Kerala and Ors.*](#) (2015) 8 SCC 293, this Court observed:

“12. The settled proposition of law is 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.”

13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not.”



34. *In Vesa Holding (P) Ltd. (supra), this Court found that there was nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat, which was a condition precedent for an offence under [Section 420](#) IPC. The complaint was found not to disclose any criminal offence at all.*

35. *It is well settled that a judgment is a precedent for the issue of law which is raised and decided. Phrases and sentences in a judgment are to be understood in the context of the facts and circumstances of the case and 9 (2004) 13 SCC 437 10 (1992) 4 SCC 305 11(2015) 8 SCC 293 the same cannot be read in isolation.*

36. *As observed above, every breach of contract does not give rise to an offence of cheating. The language and tenor of Vesa Holdings (P) Ltd. (supra), particularly, the observation that breach of contract would give rise to an offence of cheating only in those cases where there was any deception played at the very inception, is to be understood in the context of the facts of that case and accordingly construed. The phrase “in those cases where there was any deception played at the very inception” cannot be read out of context. This is not a case of*



breach of contract simplicitor but there are serious allegations of forgery of documents, use of blank letter- head, papers and cheque leaves of the appellant.”

11. The simple allegation as is evident, has been that after dishonor of the cheques, the complainant inferred that the accused persons commanded the whole event under dishonest and fraudulent intention. That being so, the prosecution under Section 420 of the I.P.C. is not at all found sustainable in the eye of law and to that extent, the order impugned is set aside. Moreover, as observed in ***Karan Singh Tyagi v. State of Uttar Pradesh and others reported in (2018)12 SCC 625***, partial quashing is permissible.

12. So far prosecution under Section 138 of the N. I. Act is concerned that will survive for the following reasons:-
A) At the present stage, assertion of the petitioners could not be tested on its face regarding status of the respective dishonoured cheques stood in surety. Contrary to it, apart from having the compliance of mandatory provisions of law, Section 139 of the N. I. Act, for the present purpose goes against the petitioners. In ***T. P. Murugan (Dead) through Legal Representatives v. Bojan and Posa Nandhi represented through Power of Attorney***



Holder, T. P. Murugan v. Bojan reported in (2018) 8 SCC 469,

it has been held:-

“21. We have heard Senior Counsel for both parties, and perused the record. Under [Section 139](#) of the N.I. Act, once a cheque has been signed and issued in favour of the holder, there is statutory presumption that it is issued in discharge of a legally enforceable debt or liability (2001)8 SCC 458. This presumption is a rebuttable one, if the issuer of the cheque is able to discharge the burden that it was issued for some other purpose like security for a loan.”

13. In ***Prabhu Dutt Tiwari vs. State of Uttar Pradesh and others reported in (2018) 13 SCC 609***, wherein it has been held:-

“3. At the stage of summoning the accused on the basis of a private complaint, all that is required is a satisfaction by the Magistrate that there is sufficient ground to proceed against the accused in the light of the records made available and the evidence adduced by the complainant.

4. Having gone through the order passed by the Magistrate, it is fairly clear that there has been the required satisfaction. The discussion by the High Court would give an indication that the Magistrate had to



appreciate the evidence and then enter a finding as to whether the accused are guilty or not. At the stage of summoning, as already stated above, the satisfaction required for the Magistrate is only to see whether there is sufficient ground to proceed against the accused.

5. Such a satisfaction for summoning an accused having been made out, the High Court went wrong in interfering with the summoning order. It was too early for the High Court to enter a finding otherwise. The impugned order is, hence, set aside. The appeal is allowed.”

14. Accordingly, the petition is partly allowed in a manner as indicated above.

(Aditya Kumar Trivedi, J)

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