NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 685 of 2006

- Ashok Kumar Pincha (Jain) S/o Lalchand Ji Pincha (Jain) Aged About 45 Years, Kosrangi, Tahsil And District Mahasamund, (C.G.)

---- Applicant

Versus

- State of Madhya Pradesh, Through : Central Bureau of Investigation, Jablapur, Madhya Pradesh, Now State Of Chhattisgarh, Through : Raipur, District Raipur, Chhattisgarh.

---- Respondent

For Applicant	:	Mr. Manoj Pranjpe, Adv.
For Respondent/State	:	Mr. Shameer Sharma, Dy. G.A.

Hon'ble Smt. Justice Rajani Dubey

Order On Board

16/09/2019

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 14.11.2006 passed by the Special Judge, Central Bureau of Investigation, Raipur, in Cr. Appeal No. 217/2005 whereby, the learned appellate Court below has affirmed the conviction and sentence of the accused/applicant as awarded by the learned Special Judicial Magistrate First Class (CBI), Raipur, vide its judgment dated 18.07.2005 in Special Criminal Case No. 05/2001 for the offence punishable under Section 420 of IPC and sentenced him to undergo R.I. for two years with fine of Rs. 5000/-, plus default stipulation.

2. Brief facts of the case are that the FIR of the incident was lodged on 20.04.1998 on this ground that during 1995-1996, one Nirmalendu Mitra, the then Branch Manager, Dena Bank, Jawahar Nagar, Branch Raipur, entered into criminal conspiracy with the present applicant, who was a proprietor of M/s. Abhay Traders, Mahasamund, Raipur. In pursuance the said criminal conspiracy and by misusing the official position in the capacity of public servant and setting aside all the rules and regulations, raised cash credit hypothecation limit of Rs. 11 lakhs, fraudulently and dishonestly to the applicant's firm without any cheques and investigation stock treatments and

books of account of the petitioner with ulterior motive to avoid deliberate conduct of supervision and monitoring of the said account to justify the end use of funds advanced, which were ultimately diverted by the party i.e. applicant for personal gain and as such committed forgery to the tune of Rs. 12.30 lakhs by way of causing wrongful loss to the bank and corresponding gain for themselves. On the basis of the said report, the criminal case was registered and charge-sheet was filed and charges were framed under Section 420 of the IPC against the present applicant.

3. So as to hold the accused/applicant guilty, the prosecution has examined as many as 6 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him and pleaded innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 18.07.2005, learned Special Judicial Magistrate has convicted the accused/applicant for the offence punishable under Section 420 of IPC and sentenced him to undergo R.I. for two years with fine of Rs. 5000/-, plus default stipulation. This order was appealed by the applicant and in the appeal, learned Appellate Court has affirmed the conviction and sentence of the appellant. Hence, the present revision.

5. Learned counsel for the applicant submits that the impugned judgment is illegal, erroneous and contrary to law. The learned Court below while passing the judgment has failed to appreciate the oral and documentary evidence on record in its correct prospective, which has resulted the erroneous findings and consequent judgment. He further submits that the learned special Judge has failed to consider that the CBI had received an information regarding misuse of office of Nirmalendu Mitra, therefore, the initial investigation was for a different offence. In whole charge-sheet, it is not stated that as to what material, is there which is contrary to the allegations made in the First Information Report. He also submits that the learned Special Judge ought to have considered the fact that since the Dena Bank, who is alleged to have been cheated, had not made any complaint to the CBI, therefore, the CBI cannot investigate the offence of Section 420 of IPC since the charge-sheet has been filed for a different offence. The CBI has no jurisdiction to investigate the matter. In the present case, no central government employee is involved and the present applicant is not an

employee of the central government and since the matter was not referred to CBI by competent authority to investigate into the matter, therefore, CBI had no jurisdiction to investigate the matter. The learned Court below has not considered the very fact that the CBI had deliberately not registered a separate offence, because that would have ousted the matter from investigation. He next submitted that even the prosecution case is taken as it is no offence under Section 420 of IPC is made out that as, the applicant had not deceived the bank to deliver any property on the strength of cheque, which is alleged to have bounced, and no delivery of property has been taken place. The learned Courts below ought to have considered that Dena Bank has already filed a complaint under Section 138 of Negotiable Instrument Act, which was pending at that time. The learned Courts below have grossly erred in holding that only the applicant is the accused and has failed to appreciate that instead of filing the charge-sheet against the Nirmalendu Mitra the charge-sheet under Section 420 of IPC was filed only against the applicant. The learned Courts below ought to have appreciated that if the cheque has been bounced then the proceedings under Section 138 of the Negotiable Instruments Act can be initiated instead of the proceedings under Section 420 of the IPC. Learned counsel for the applicant placed reliance on the decisions of Apex Court in the matter of R.K. Vijayayasarathy and Another Vs. Sudha Seetharam and Another reported in 2019 SCC Online SC 208, Toran Singh Vs. State of M.P. reported in 2002 Volume 6 SCC 494, Vijaya Rao Vs. State of Rajasthan and Another reported in (2005) 7 SCC 69, Sitakant Govind Bhobe Vs. J.X. Miranda and others reported in 1977 CrLJ 531 (Goa), and in decision of Sangita Shrivastava Vs. Santram and Another reported in 2018 Law Suit (MP) 486.

6. Learned counsel for the State has supported the impugned judgment.

7. Heard learned counsel for the parties and perused the material on record including the impugned judgment.

8. It is clear from the statement of Dhannjay Kumar (PW-1) that applicant gave cheque Ex.-P-27 which was dishonored. In *Sangita (supra)* it has been held in para 9 as under:-

> *9. “Now what is to be examined is whether dishonor of the cheques by itself constitute an offence of cheating or not. Even the report relied on by the respondent/complainant as was*

submitted by the CSP Bhind reveals that he has mentioned that the case is made out under Section 42, 34 read with Section 138 of N.I. Act. Admittedly, cheque was signed by Dheeraj Shrivastava and not by the petitioner. In fact in the case of Sitakant Govind Bhobe Vs. J. X. Miranda, 1977 CrLJ 531 (Goa), it has been held that dishonour of cheque by itself does not constitute the offence of cheating. In the present case, it is apparent that the petitioner was not a party to the transaction. No amount was settled at her instance or before her. No amount was paid at her instance or before her. On the contrary, she facilitated return of the money given by the complainant to the husband of the petitioner. Thus, in a case of cheating the charge must set out in the manner in which the offence was committed and in the present case manner of inducement as far as the petitioner is concerned, is not available. Petitioner as a colleague had only facilitated meeting of property dealer with the complainant but incidentally property dealer happens to be her husband does not per se mean that she had any intention of cheating or dishonestly inducing the respondent/complainant to deliver any property. In fact on the other hand she has acted as a facilitator as per the own showing of the complainant in asking her husband to return the amount through cheques."

9. Further, Hon'ble the Apex Court in the matter of *Vijaya (supra),* in para 5, held as under:-

5. "Except using the expressions "fraudulent misappropriation" and "Malafide intention", the allegations in the complaint do not at all disclose as to how the appellant can be found guilty of the offence under Section 420 IPC. The ingredients constituting Section 420 are conspicuously lacking in the complaint. All the Courts have failed to address themselves to the crucial question whether as far as the appellant is concerned any offence under Section 420 or for that matter any offence under Section 409 has been committed. Even going by the allegations in the complaint, allowing the criminal proceedings to go on against the appellant, would result in abuse of the process of the Court. Hence, the proceedings in Complaint Case No. 10 of

> *200 on the file of the Chief Judicial Magistrate, Sikar are quashed as against the appellant. The appeal is allowed accordingly."*

10. Hon'ble the Apex Court in case of *M. Suresh V. State of A.P. 2016 SCC Online SC 794,* in para 10, held as under:-

> 10. *"We find from the documents on record, particularly the counter affidavit of the respondent himself and the cancellation deed dated 9th October, 2006 filed along with the counter affidavit that the dispute between the parties is purely of civil nature. Even the stand of the complainant is that the matter has already been resolved and the complainant has already received the amount of Rs. 95 Lacs against the payment of Rs. 85 Lacs. However, according to him, the appellants were liable to pay further sum of Rs. 30 Lacs as the cheques for the said amount have been dishonoured. Mere fact that the cheques have been dishonoured and the appellants may be liable to pay further amount to the complainant will not by itself make out a case of cheating. It is a dispute for which the respondent-complainant can take his remedies under the law. We are conscious that merely because a case involves a civil dispute does not by itself bar remedy under criminal law if a case is made out. At the same time, process of criminal law cannot be pressed into service merely for setting a civil dispute when no offence is committed. Law on the point is well settled in series of judgments of this Court including Hridaya Ranjan Pd. Verma v. State of Bihar[1], Anil Mahajan v. Bhor Industries Ltd.[2], Indian Oil Corproration v. NEPC India Ltd.[3], Inder Mohan Goswami v. State of Uttaranchal[4] and Chandran Ratnaswami v. K.C. Palanisamy[5]."*

11. Ashok Kumar Singh Chouhan (PW-6) also admitted in his cross-examination, that it is true that loan was given to applicant on credit limit. It is also true that Ex.-P-27 was also given to Dena Bank. In para 10 this witness stated that he did not know that Dena Bank filed any case of N.I. Act in

1 (2000) 4 SCC 168.
2 (2005) 10 SCC 228.
3 (2006) 6 SCC 736.
4 (2007) 12 SCC 1.
5 (2013) 6 SCC 740.

respect of Ex.-P-27. Thus, it is clear from the witnesses that this is only a case of loan transaction, the prosecution did not show any case of fraudulent misappropriation.

12. In view of aforesaid discussion and in the light of the above legal facts, the revision is allowed. The impugned judgment of conviction and order of sentence is set aside. Applicant is acquitted of the charge under Section 420 of IPC.

13. Revision is allowed.

Sd/-
(Rajani Dubey)
JUDGE

H.L. Sahu