THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

Hon'ble Shri Justice Rajendra Kumar Srivastava

M.Cr.C No.9894/2019

Vivek Bafna

VS.

State of M.P. & another

Shri Sankalp Kochar, learned counsel for the applicant.
Shri Ishteyaq Husain, learned G.A. for the respondent No. 1/State.
Shri Ajay Sen, learned counsel for the respondent No. 2.

O R D E R
(02.06.2020)

The present application has been filed under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "**Cr.P.C.**") seeking quashment of First Information Report (hereinafter referred to as the "**FIR**") in respect of Crime No.270/18 registered at P.S. Kotwali, Jabalpur, on the basis of complaint made by the respondent No.2, in respect of offences punishable under Sections 420, 406 and 34 of the Indian Penal Code, 1860 (hereinafter referred to as the "**IPC**").

2. As per the case of the prosecution, as reflected from the FIR, a complaint was made by the respondent No.2 stating that he runs a shop under the name of 'Archana Garment' for manufacturing and selling of salwar and fancy salwar suits. In the year 2015-16, the applicant and Late Shri Gyanchand Bafna came to his shop and started doing business with him on cash basis; due to this, the respondent No.2 started trusting them. Thereafter, both of them

started taking goods on credited and also made payment in respect of the same. However, it was told by them that payment in respect of salwar suits worth Rs. 13,86,188, being purchased after 15.11.17, would be made in March 2018. But, payment was not made in cash and instead of same, eight cheques were issued against the bank account in the name of M/s Sunita Fashion, maintained with Bandhan Bank Erode Tamil Nadu. However, when the aforesaid eight cheques were presented in the bank for encashment, they were bounced due to insufficient funds in the said bank account. It was further stated by the respondent No.2 that the applicant and Late Shri GyanchandBafnahas not paid an amount of Rs. 13,86,188 to him and an amount of Rs. 60,98,806 to his fellow businessmen. Therefore, payment in respect of a total amount of Rs. 74,84,994 has not been made by them to him and his fellow businessmen. It was further stated that despite knowing that there is sufficient amount in the bank account, the applicant and Late Shri Gyanchand Bafna provided cheques to the respondent No.2 and his fellow businessmen with the objective of acquiring wrongful gain. On the basis of aforesaid complaint, preliminary inquiry was done by the concerned police officials and on finding *prima facie* case, FIR in respect of Crime No. 270/19 was registered against the Petitioner and Late Shri Gyanchand Bafnain respect of offences punishable under sections 420, 406 and 34 of the IPC.

3. On behalf of the applicant, it has been contended that no criminal case of cheating is made out against the applicant. Further,

even the demand notice (Annexure A/2) given by the respondent No.2 shows that the present case pertains to dishonor of cheque though no proceedings in respect of the same have been initiated. It has further been contended by the applicant that his father, Late Shri Gyanchand Bafna, has committed suicide by jumping in front of train at Mumbai due to pressure by one Amritlal Purohit. In respect of the same, an FIR has been registered against Amirtlal Purohit at Police Station Vashi, in respect of Crime No. 1970/18 in respect of offences punishable under sections 306 and 34 of the IPC. In support of his submissions, the applicant has placed reliance on decisions given in **Vir Prakash Sharma vs. Anil Kumar Agarwal &Anr,** (2007) 7 SCC 373, **Binod Kumar &Ors. vs. State of Bihar &Anr.**, (2014) 10 SCC 663, **Inder Mohan Goswami &Anr. Vs. State of Uttaranchal &Ors.,** (2007) 12 SCC 1 and **Hemant Kumar Das &Anr vs. State of Bihar&Anr**, Criminal Miscellaneous No. 905/2018 (Patna High Court).

4. *Per contra*, the learned counsel for the State has opposed the prayer made by the petitioner, on the ground that this is not a fit case in which inherent power under section 482 of Cr.P.C. can be exercised. The State/Respondent has relied upon the decision in ***Sazid Khan vs. State of Haryana***, 2018 SCC OnLine P&H 1733.

5. On behalf of the respondent No.2, a reply has been filed wherein it has been stated that the applicant and Late Shri Gyanchand Bafna dishonestly induced the respondent No.2 and other merchants for delivering garments worth Rs. 74,84,994/- and issued them

cheques which were dishonoured. Therefore, the applicant committed wrongful loss to the respondent No.2 and other merchants and *prima facie,* there is material in respect of offence punishable under section 420 of the IPC. It has further been contended that since the applicant was having dominion over garments worth Rs. 74,84,994/- but the same has dishonestly been misappropriated by him for his personal use, and the same amounts to an offence of criminal breach of trust. On behalf of the respondent No.2, reliance has been placed in the decisions given in ***OPTS Marketing Pvt. Ltd. vs. State of A.P.***, 2001 Cr.L.J. 1489 and ***Vijayander Kumar &Ors. vs. State of Rajasthan &Ors.***, (2014) 3 SCC 389.

6. Since the present case involves issue pertaining to quashment of proceedings by invoking inherent powers under section 482 of Cr.P.C, it is pertinent to examine the factors which are to be taken into consideration while deciding such issue. In the landmark decision ***State of Haryana &Ors. vs. Bhajan Lal &Ors.***, 1992 Supp (1) SCC 335, it has been held by the Hon'ble Apex Court 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."*

7. Similarly, in the case of ***Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460***, the Hon'ble Apex has laid down following guidelines in respect of inherent powers under section 482 of Cr.P.C:-

> *"27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not*

only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

> *27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.***"**

8. After hearing counsels from both the sides, it is evident that the issue arising for consideration in the present is whether by giving cheques to the respondent No.2, offences under section 406 and 420 of the IPC are *prima facie* made out against the applicant. It should be kept in mind that while examining the said issue, this court is not expected to conduct a detailed inquiry under the garb of inherent powers under section 482 and it only has to see whether, from material available on record, *prima facie* case is made out or not. On a perusal of the FIR, it becomes evident that first allegation against the applicant is that despite knowing the fact that there is not sufficient amount in his account, he presented eight cheques worth Rs. 13,86,188/- to the respondent No.2 and also presented similar cheques to other businessmen. The aforesaid issue requires examination of the fact as to whether, while providing such cheque, there was sufficient amount in the bank account of the applicant and even if there was no sufficient amount, whether there was cheating and dishonest inducement. *Prima facie*, it cannot be said that no offence under section 420 of IPC is made out. In my opinion, adjudication of the said issue requires detailed examination of facts and the same cannot be done by this Court by invoking inherent powers under section 482 of Cr.P.C. Though the applicant has filed

copies of certain bank statements vide I.A. No. 2224/20, relevance and evidentiary value of the same cannot be decided in proceedings under section 482 of Cr.P.C. In view of decisions of the Hon'ble Apex court in ***State of Orissa vs. Devendra Nath Padhi***, (2005) 1 SCC 568 and ***Rukmini Narvekar v. Vijaya Satardekar,*** (2008) 14 SCC 1, only unimpeachable evidence of sterling quality can be looked into while adjudicating a petition under section 482 of Cr.P.C. Those documents and evidence, which require detailed examination by following the tenets of evidence law including issue of relevancy and admissibility, cannot be considered as unimpeachable evidence of sterling quality and therefore, though the applicant has filed bank statement, the same is required to be proved during the course of trial and the same cannot be looked by this court in a petition under section 482 of Cr.P.C. Facts of the present case are, in fact, similar to those in the decision of this court in***Daulatram vs. Kishorilal***, 1982 MPWN 120, wherein issue involved framing of charge under section 420 of IPC where post-dated cheques were issued despite the fact that sufficient amount was not available in account. It was opined by this Court in *Daulatram (supra)* that *prima facie*, it cannot be said that element of cheating under section 420 of IPC is not present. In any case, the said issue would be a question of trial.

9. Perusal of the FIR also indicates that second allegation against the applicant is that payment in respect of apparels were not made and against the same, certain cheques were issued despite knowing the fact that sufficient amount is not available therein; and the same has been done by the applicant in order to provide wrongful

gain to himself. The said issue requires adjudication of material facts, in order to examine if the offence under section 406 of the IPC is made out or not. On the basis of complaint and statements of the witnesses, *prima facie* it cannot be said that no offence is made out in respect of section 406 of the IPC.

10. Respondent No.2 has correctly placed reliance in the decision given in *Vijayander Kumar(supra)* wherein the Hon'ble Court has referred to decision in ***R. Kalyani v. Janak C. Mehta***, (2009) 1 SCC 516. In *R. Kalyani (supra)*, the Hon'ble Apex Court held as under:

> *"15. Propositions of law which emerge from the said decisions are:*
>
> *(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.*
>
> *(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.*
>
> *(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.*
>
> *(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."*

11. Further, in the case of ***Lakshman v. State of Karnataka***, (2019) 9 SCC 677, the Hon'ble Apex Court has held as under:

> *"8.....It is fairly well settled that power under Section 482 CrPC is to be exercised sparingly when the case is not made out for the offences alleged on the reading of the complaint itself or in cases where such complaint is filed by way of abuse of the process. Whether any schedules were appended to the agreement or not, a finding is required to be recorded after full-fledged trial. Further, as the contract is for*

> *the purpose of procuring the land, as such the same is of civil nature, as held by the High Court, is also no ground for quashing. Though the contract is of civil nature, if there is an element of cheating and fraud it is always open for a party in a contract, to prosecute the other side for the offences alleged. Equally, mere filing of a suit or complaint filed under Section 138 of the NI Act, 1881 by itself is no ground to quash the proceedings."*

12. It is not disputed that offence under section 420 of the IPC is maintainable despite pendency of proceedings under section 138 of NI Act. Plea of double jeopardy on the ground that the applicant was not convicted under section 138 of the NI Act is not tenable. Hon'ble Supreme Court in the case of ***Sangeetaben Mahendrabhai Patel vs. State of Gujarat &Anr***, (2012) 7 SCC 621 has held as under:-

> *"37. Admittedly, the appellant had been tried earlier for the offences punishable under the provisions of Section 138 of the NI Act and the case is sub judice before the High Court. In the instant case, he is involved under Sections 406/420 read with Section 114 IPC. In the prosecution under Section 138 of the NI Act, the mens rea i.e. fraudulent or dishonest intention at the time of issuance of cheque is not required to be proved. However, in the case under IPC involved herein, the issue of mens rea may be relevant. The offence punishable under Section 420 IPC is a serious one as the sentence of 7 years can be imposed.*
> *38. In the case under the NI Act, there is a legal presumption that the cheque had been issued for discharging the antecedent liability and that presumption can be rebutted only by the person who draws the cheque. Such a requirement is not there in the offences under IPC. In the case under the NI Act, if a fine is imposed, it is to be adjusted to meet the legally enforceable liability. There cannot be such a requirement in the offences under IPC. The case under the NI Act can only be initiated by filing a complaint. However, in a case under IPC such a condition is not necessary.*
> *39. There may be some overlapping of facts in both the cases but the ingredients of the offences are entirely different. Thus, the subsequent case is not barred by any of the aforesaid statutory provisions."*

13. In view of the above position of law, decisions relied upon by the applicant are not of much help. In the present case, on the basis of FIR and contents of the charge-sheet, including statements of the witnesses, it cannot *prima face* be held that no offence under Section 420 of IPC is made out. It is a settled law that if element of fraud and deception are present in a dispute of civil nature, then proceedings under relevant provisions, including under section 420 of the IPC, can simultaneously proceed.

14. In view of above, the present petition filed by the applicant, Vivek Bafna, is hereby **dismissed.**

(Rajendra Kumar Srivastava)
Judge

L.R.

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