

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Bibhas Ranjan De

C.R.M. (A) 567 OF 2022

**Amishek Kumar Singh
VS.
THE STATE OF WEST BENGAL**

For the petitioner : Mr. Sourav Chatterjee
Mr. Avik Ghatak
Mr. S. Nag
Mr. A. Rakshit

For the de-facto : Mr. Sabir Ahmed

For the State : Mr. Rudradipta Nandy
Mr. Antarikhya Basu

Heard on : February 7, 2022

Judgment on : February 7, 2022

DEBANGSU BASAK, J.:-

1. Petitioner seeks bail.
2. Learned advocate appearing for the petitioner submits that, it is alleged that the petitioner did not pay the amount involved in two dishonoured cheques dated May 11, 2016 and

May 15, 2016 valued at Rs.10,00,000/-. He draws the attention of the Court to the provisions of Sections 138, 143A and 148 of the Negotiable Instruments Act, 1881 (Act of 1881). He submits that, the de-facto complainant did not issue any notice within thirty days of the date of dishonour of cheques as required under the Act of 1881. At best, the de-facto complainant is entitled to compensation of 20 per cent of the value of the two cheques. He relies upon **(2011) 13 SCC 412 (Thermax Limited & Ors. Vs. K. M. Johny & Ors.)** and submits that, the de-facto complainant is seeking to circumvent the civil proceedings. The claim of the de-facto complainant is barred by limitation so far as Civil Courts are concerned. He draws the attention of the Court to the fact that, First Information Report (FIR) was lodged on January 11, 2022 in respect of two cheques dishonoured in 2016. He relies upon **(2014) 2 SCC 1 (Lalita Kumari Vs. Government of Uttar Pradesh & Ors.)** and submits that, the FIR does not disclose commission of a cognizable offence. In any event, given the abnormal delay in initiating the criminal complaint and given the fact that the de-facto complainant did not

satisfactorily explain the reasons for the delay, a preliminary inquiry should be made. According to him, none of the ingredients under Sections 420 and 406 of the Indian Penal Code (IPC) stands satisfied. The de-facto complainant did not lodge any complaint contemporaneously.

3. Learned advocate appearing for the State submits that, FIR was lodged on January 11, 2022. He draws the attention of the Court to the contents in the case diary. He submits that, the petitioner changed his residence and mobile phone numbers frequently. He submits that, two notices under Section 41A of the Code of Criminal Procedure (Cr.P.C.) were issued to the petitioner and that the petitioner did not respond thereto.

4. Learned advocate appearing for the de-facto complainant submits that, the petitioner is a friend of the de-facto complainant. After dishonour of the cheques, the petitioner used to assure the de-facto complainant that payments would be made in due course. The de-facto complainant was made to wait by the petitioner from lodging any police complaint or initiating any proceedings for recovery. Lastly, when the de-

facto complainant found that the petitioner changed his address and his mobile phone numbers also and after much difficulty when the de-facto complainant found out about him, the police complaint was lodged. According to him, ingredients of Sections 420 and 406 of the IPC stands satisfied. Section 406 of the IPC is a continuing offence.

5. In reply, learned advocate appearing for the petitioner submits that, the petitioner received only one 41A Cr.P.C. notice and that the petitioner could not respond thereto as the petitioner was unwell at that material point of time.

6. There is a FIR alleging that the petitioner defrauded and cheated the de-facto complainant for a sum of Rs.10,00,000/-. The petitioner also changed his residence and mobile phone number in order to avoid such payment.

7. The materials in the case diary discloses that, the petitioner received a sum of Rs.10,00,000/- in aggregate from the de-facto complainant through NEFT payment, cheque payment and cash payment. It is the case of the petitioner that the petitioner issued two cheques dated May 11, 2016 and May 15, 2016 aggregating to a sum of Rs.10,00,000/- and

that those two cheques were dishonoured them. It is the case of the petitioner that in view of the provisions of the Act of 1881 and the two authorities of the Supreme Court as cited on his behalf, the prayer for anticipatory bail should be granted.

8. The two cheques are admittedly of 2016 with no notice under Section 138 of the Act of 1881 being placed on record.

9. In ***Thermax Limited (supra)***, the Supreme Court considered an appeal directed against the order of the Division Bench of the High Court dismissing the writ petition filed by the Thermax Limited as being misconstrued. Noticing the fact that there were disputes with regard to the liability to pay by Thermax Limited with such company not having any intention of not paying, in the facts of that case, the Supreme Court quashed the criminal complaint. The Supreme Court also noted the fact that the complaint was belatedly lodged in the year 2002 in respect of disputes pertaining to the period from 1993 to 1995. The disputes relate to purchase orders with the liability of Thermax Limited yet to be determined. In the facts of the present case, it cannot be said that there were disputes

between the private parties with regard to the quantum involved.

10. In ***Lalita Kumari (supra)***, the Supreme Court is of the view that where information received does not disclose cognizable offence a preliminary inquiry may be conducted. In the facts of the present case, the police complaint lodged by the de-facto complainant against the petitioner, in substance, cannot be said not to disclose commission of a cognizable offence. Section 406 of the IPC is a continuing offence. It cannot be said with any certitude that there is no dishonest intention of the petitioner to deceive the de facto complainant.

11. In such circumstances, considering the gravity of the offence and the involvement of the petitioner therein and considering the fact that the petitioner did not respond to the notices issued under Section 41A Cr.P.C., the requirement of the prosecution for custodial interrogation of the petitioner cannot be ruled out.

12. In such circumstances, we are unable to grant anticipatory bail to the petitioner as prayed for. CRM (A) 567 of 2022 is rejected.

(Debangsu Basak,J.)

I agree.

(Bibhas Ranjan De, J.)