

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

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 3196 of 2019

Laxman Prasad Agarwal @ Laxhman Prasad Agarwala

-vs-

The State of West Bengal & Anr.

For the Petitioner : Mr. Ranadeb Sengupta
Mr. Sachit Talukdar

For the State : Mr. Swapan Banerjee
Ms. Purnima Ghosh

Heard on : 24.6.2022

Judgment on : 06.07.2022

Ajoy Kumar Mukherjee, J.

1. The present revisional application has been directed for quashing the impugned proceeding being G.R. Case No.448 of 2019 arising out of Jorasanko Police Station Case No.89 of 2019 dated April 15, 2019 under Sections 420/406 of the Indian Penal Code pending before the Court of learned Additional Chief Metropolitan Magistrate, Calcutta.

2. The petitioner has contended in his revisional application that the petitioner is the sole proprietor of "Pannalal Mahabir Prasad". The opposite party no.2 has been doing business with the petitioner for a considerable period of time. There were monetary transactions between the petitioner and the opposite party no.2 and accordingly, the petitioner used to make regular payment and provide requisite returns to the opposite party no.2 on regular

interval. In course of time, petitioner's business faced financial setbacks and he was in urgent need of financial assistance and as such, he approached the opposite party no.2 with a request to grant him loan of Rs.30 lakhs for enabling him to revive to his plunging business.

3. The opposite party no.2 had taken into consideration the said proposal and due to good business relationship he afforded the said loan through RTGS on November 2, 2017 from Indian Overseas Bank, Lalbazar Branch to the petitioner's account of Yes Bank, Burrabazar Branch. The said loan was accommodated with a condition that the petitioner would repay the sum within a period of 91 days from the date of issuance of the sum and he will pay interest at the rate of 15% per annum in case of failure to repay within the stipulated period.

4. The petitioner in discharging his liabilities towards the opposite party no.2 had issued an account payee cheque bearing no.791236 dated June 2, 2018 to the tune of Rs.30 lakhs in favour of the opposite party no.2 drawn on Yes Bank Limited and at the time of issuance of cheque the petitioner had requested the opposite party no.2 not to place the same for encashment immediately as his business is yet to be recovered from the downfall.

5. On September 12, 2018 the opposite party no.2 placed the said cheque for encashment with his banker and the opposite party no.2 came to know that his cheque has been dishonoured as the signature of the drawer differs. Thereafter, on October 6, 2018 the opposite party no.2 started a proceeding under Section 138 of the Negotiable Instruments Act which has been registered as Complaint Case No.97961 of 2019 and the said complaint case is pending for evidence. During pendency of the aforesaid proceeding under Section 138 of the Negotiable Instruments Act, the opposite party no.2 on April 13, 2019

had lodged a complaint against the petitioner alleging that the petitioner has cheated and misappropriated a sum of Rs.30 lakh obtained as a loan from the opposite party no.2.

6. In the FIR being Jorasanko Police Station Case No.89 of 2019 dated April 15, 2019 under Sections 420/406 of the Indian Penal Code, the opposite party no.2 alleged that the petitioner had requested him for accommodating a loan of Rs.30 lakh and the opposite party no.2 accordingly issued the loan in favour of petitioner due to cordial relationship and in order to repay the loan, the petitioner had issued a cheque being no.791823 dated February 1, 2018 to the tune of Rs.30 lakh.

7. It is further alleged that after being receipt of the loan, petitioner gradually started to avoid phone calls of the opposite party no.2 and also stopped personal visit. Opposite party no.2, sensing something wrong, visited petitioner personally and requested him to make repayment and accordingly, the opposite party no.2 had also asked petitioner to issue a fresh cheque as an earlier one was about to expire. Accordingly, the petitioner issued another cheque being no.791236 dated July 2, 2018 in favour of the opposite party no.2 but the said cheque was returned dishonoured as the signature of the drawer differed.

8. Mr. Ranadeb Sengupta, learned counsel for the petitioner, submits that the complaint lodged by opposite party no.2 was filed after seven months from the date of dishonour of the cheque without giving any cogent explanation whatsoever regarding such delay and thereby makes it clear that the same was an afterthought and merely a harassing measure adopted by opposite party no.2.

9. Mr. Sengupta further submits that on a plain reading of the complaint filed by the opposite party no.2, it is clear that the same is merely counterblast to the petitioner's inability to make complete payment and the alleged complaint lodged by opposite party no.2 is out of sheer malice by adding colour of criminality to an issue which involves partial non-performance of business obligations. The complaint has been filed to tarnish the reputation of the petitioner and his company in the business circle and the allegation does not at all constitute an offence punishable under Section 420 of the Indian Penal Code because in order to attract Section 420 of the Indian Penal Code the intention to deceive must be from the very beginning and a mere inability of a person to repay a portion of the sum advanced to him during business transaction would not constitute an offence under Section 420 of the Indian Penal Code.

10. Mr. Sengupta further argued that the allegations leveled in the FIR suffer from antagonistic contradictions and inherent absurdity. Even if the allegation taken to be true, it does not make out any cause of action giving rise to initiation of an investigation under Chapter XII of the Code of Criminal Procedure. He further submits that in the complaint itself it has been stated that the cheque was dishonoured because of mismatch of the drawer's signature. Therefore, the whole story of deception and misappropriation of fund is completely concocted.

11. Further argument advanced that appropriate remedy lies in the proceeding initiated by opposite party no.2 under Section 138 of the Negotiable Instruments Act and as such, the present complaint is required to be quashed at its threshold. Practically, the opposite party no.2 has roped the petitioner in a criminal case without attributing any specific role against the petitioner in

the alleged offence and the same has been done solely for the purpose of settling the dispute.

12. In this context, Mr. Sengupta relied upon the case laws reported in **2006(3) CHN 784** in the case of **Tapan Kumar Ghosh and Ors. Vs. State of West Bengal & Anr.** and in the case of **Sripati Singh (since deceased) through his son Gourav Singh Vs. State of Jharkhand & Anr.** reported in **(2021) SCC OnLine SC 1002.**

13. Mr. Madhusudan Sur, learned counsel for the State submits that on the basis of complaint lodged by opposite party no.2, investigation started and the proceeding should not be quashed at its threshold simply because a proceeding under Section 138 of the Negotiable Instruments Act is pending against the petitioner.

14. Considered rival submissions. It is now well-settled that in case of offence relating to dishonour of cheque, there is no bar to proceed simultaneously under Section 138 of the Negotiable Instruments Act as well as under Section 420 of the Indian Penal Code

15. In ***Sangeetaben Mahendrabhai Patel Vs. State of Gujarat & another*** reported in **(2012) 7 SCC 621** Apex Court was pleased to observe as follow:

“27. Admittedly, the appellant had been tried earlier for the offences punishable under the provisions of Section 138 N.I. 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 N.I. 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. In the case under N.I. 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 N.I. 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 N.I. Act can

only be initiated by filing a complaint. However, in a case under the IPC such a condition is not necessary”.

“28. *There may be some overlapping of facts in both the cases but ingredients of offences are entirely different. Thus, the subsequent case is not barred by any of the aforesaid statutory provisions”.*

16. The opposite party no.2 has specifically alleged in his FIR, when the cheque was returned as dishonoured, he requested the petitioner on various occasions for making repayment but the petitioner was trying to avoid his phone calls and also stopped visiting him. It is true that signature of a person may differ for many reasons, like sickness state of mind, old age and some more reasons. It is equally true that in order to constitute an offence under Section 420 of the Indian Penal Code *mens rea* i.e. guilty mind is required to be proved. If in the present case it was a simplicitor case of differing signature of the drawer appearing on the cheque due to innocence and if the drawer had *bona fide* intention to make payment, he could have made payment after receipt of notice in order to discharge his admitted liability, instead of avoiding opposite party no.2, as alleged in the complaint. Accordingly, the *mens rea* has to be gathered from the facts and circumstances of the case and not from a mere statement that there was all along good relationship and for which there cannot be any *mala fide* intention from the very beginning in taking loan or issuing cheque, where signature got differed.

17. Admittedly in the present case petitioner took loan of Rs. 30,00,000/- from opposite party no.2/ complainant. Petitioner also not denied specifically that he had given the impugned cheque to opposite party no. 2 towards repayment of debt. Documents transpire that impugned cheque got dishonoured on the ground “Drawer’s signature differs”.

18. In this context, it is to be mentioned that the drawer of the cheque will have to take abundant precaution while issuing the cheque, so that the cheque

should be honoured and contracted obligations are fulfilled. If the drawer intentionally tampers with the cheque, the cheque with difference in signature, will be definitely returned. In the present case even after service of statutory notice, the amount involved in the cheque are not paid by the petitioner. In such circumstances, petitioner will have to explain that tampering of cheque if any, was not made with any oblique motive. The *mens rea* behind issuing such cheque will have to be determined based on the material to be collected during the course of trial. Even if during trial accused take the plea that the signature appearing in the cheque in question was not put by him, it is for the accused to prove the said fact specifically when specific plea of complainant is that the accused issued the cheque to discharge his liability. Therefore, it is for the accused to explain as to how the cheque in question which pertained to his account bearing his incomplete signature reached in the possession of the complainant. Fair trial includes fair and proper opportunities allowed by law to prove innocence of the petitioner.

19. In this context I am inclined to refer relevant portion of the statutory judgment of Apex Court in ***State of Haryana Vs. Bhajan Lal*** reported in **(1992) SCC (Cri) 426** to understand whether this is a fit case where power under section 482 of the code can be invoked, relevant portion of the judgment dealing with the cases where such power can be invoked is reproduced below:-

“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”.

20. In view of the above facts and circumstances of the case and discussion made above, as the materials available so far discloses prima facie offence against the present petitioner, it would not be proper to quash the proceeding at its threshold exercising power under Section 482 of the Code.

21. The case law cited on behalf of the petitioner, in the case of **Sripati Singh (supra)** is not applicable in the present case as in the said case there was an assurance of repayment and based on such assurance the appellant

presented the cheque for realization but the cheque got dishonoured on the ground of insufficient fund. Accordingly, it was a clear case which attracted Section 138 of the Negotiable Instruments Act but in the present context, it is not a case of dishonoured cheque on the ground of insufficient fund rather the cheque was dishonoured as the signature of the drawer differs and no explanation offered on behalf of the petitioner as to why his signature got differed in the impugned cheque and no attempt was made on his behalf to make payment of admitted loan amount in spite of several requests made by the opposite party no.2 and no attempt has also been made to show that he did not have any dishonest intention in issuing the cheque as he had sufficient fund in his account or there is no dishonest intention at the time of taking loan and all these factors prima facie constitutes *mens rea* for the offence and to prove or disprove the same the trial is required to be conducted.

22. The other case cited by the petitioner, **Tapan Kumar Ghosh and Others (supra)** is also not applicable because in that case court held that there is no doubt that prima facie element of Section 138 attracted and there was nothing to show that any inducement or fraudulent or dishonest intention on the part of the accused person was there right from the beginning of the transaction which is not the case in the present context as discussed above.

23. In view of the above, prayer for quashing the proceeding being G.R. Case No.448 of 2019 arising out of Jorasanko Police Station Case No.89 of 2019 dated April 15, 2019 under Sections 420/406 of the Indian Penal Code pending before the Court of learned Additional Chief Metropolitan Magistrate, Calcutta is considered and dismissed.

24. CRR 3196 of 2019 is accordingly dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(AJOY KUMAR MUKHERJEE, J.)