

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION

PRESENT:

THE HON'BLE JUSTICE BIVAS PATTANAYAK

CRR 139 of 2021

Ramesh Ganesan

Versus

State of West Bengal & Another.

For the petitioner: Mr Sabyasachi Banerjee, Advocate.

Mr Amar Singh, Advocate.

Mr Debangan Bhattacharjee, Advocate.

Mr Satyaki Basu, Advocate.

For the State: Mr Aditishankar Chakraborty, Additional Public Prosecutor.

Mr Aniruddha Biswas, Advocate.

For Opposite party no.2: Mr Suresh Kumar Mitruka, Advocate.

Mr Aayush Mitruka, Advocate.

Mr Manotosh Bhowmik, Advocate.

Heard on: 03.08.2022, 10.08.2022, 11.08.2022

Judgment on: 11.11.2022.

BIVAS PATTANAYAK, J. : –

1. The present revisional application has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) for quashing of proceeding in connection with G.R case no.431

of 2021 (arising out of Matigara Police Station case no. 92 of 2021 dated 08.02.2021) under Sections 384/403/409/420/468/471/506/120B of the Indian Penal Code.

2. The brief fact of the case is that the opposite party no.2-complainant filed an application under Section 156(3) of the Code before the learned Additional Chief Judicial Magistrate, Siliguri against the petitioner, being the Managing Director & Chief Executive Officer of the Finance Company and others including the Finance Company alleging, *inter alia*, as follows.

(i) The representatives and agents of HDB Financial Services Limited from its Siliguri Branch sometime in the year 2015 approached the husband of the complainant late Indrajit Mukherjee with a proposal of credit facilities to the firm namely Shree Techno Services on certain terms and conditions.

(ii) On such representation of HDB Financial Services Limited the firm namely Shree Techno Services through late Indrajit Mukherjee availed loan facilities from the HDB Financial Services Limited by way of two loan accounts being no.1190917 amounting to Rs. 60,77,261/- and no. 4440752 amounting to Rs. 30,00,000/- respectively.

(iii) For availing the aforesaid loans the firm mortgaged its property measuring 7.84 *cottahs* of land comprised within mouza-Thiknikata, Matigara, District-Darjeeling by depositing the original deeds and other relevant documents to

the HDB Financial Services Limited. The complainant and her late husband also delivered seven blank cheques bearing nos. 118635 to 118641 drawn on Axis Bank Ltd, SF Branch, Siliguri unto the agents/officers of HDB Financial Services Limited as per their asking.

(iv) At the time of disbursing the loan amounts the HDB Financial Services Limited deducted a substantial portion of money to obtain insurance coverage from its sister concern namely HDFC Life Insurance Company Limited with the aim to secure the loan amounts against any untoward future eventuality. However only a part of the loan amount was secured.

(v) The husband of the complainant namely Mr Indrajit Mukherjee expired on 30.07.2019 leaving behind the opposite party no.2-complainant and two children. Such information was duly sent to HDB Financial Services Limited on 13.08.2019. Due to sudden demise of Mr Indrajit Mukherjee, being one of the partners, the firm's account at Axis Bank became non-operational and was closed on 29.02.2020.

(vi) Till the death of Mr Indrajit Mukherjee, the firm made timely payments of the principal sum as well as interest in respect of the loans availed. The HDB Financial Services Limited could have settled the balance claims through the money received from insurance claims, however, instead of doing so they raised unjust demands on the complainant.

(vii) Despite repeated requests the HDB Financial Services Limited refused to set off the amount or return the documents pledged as security. The complainant thereafter issued legal notices on 16.07.2020 and 03.08.2020, however, no response were received from HDB Financial Services Limited.

(viii) On 03.09.2020 the HDB Financial Services Limited issued notice to the complainant under sections 13(2) read with section 13(13) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act) raising purported claim of Rs.34,86,706/- without providing any details in relation thereto.

(ix) The complainant on 21.10.2020 sent a detailed reply to the aforesaid notice dated 03.09.2020 raising objection to the unjust demands of HDB Financial Services Limited and requested them to recall the aforesaid notice issued under the SARFAESI Act.

(x) On 04.11.2020 the HDB Financial Services Limited issued a letter to the complainant rejecting the objections raised by the complainant and continued to threaten the complainant for satisfying the unjust demands.

(xi) Thereafter HDB Financial Services Limited sent a demand notice dated 18.01.2021 under Section 138 of the Negotiate Instruments Act, 1881 contending dishonour of cheque bearing no. 118460 dated 10.12.2020 amounting to Rs. 50,77,261/-.

(xii) In order to satisfy the unjust demands the accused illegally used one of the blank cheques of the Axis Bank that was delivered to them by the complainant and her late husband for availing credit facilities by collectively forging the date, amount and the name of the payee in the said cheque.

(xiii) The aforesaid cheque is outdated and the amount demanded under the Negotiable Instruments Act is much more than the earlier demand made under the SARFAESI Act which plainly shows dishonest and fraudulent demands.

(xiv) On such basis the complainant filed the petition praying for sending the same to the Officer-in-charge, Matigara Police Station for causing investigation by treating the same as FIR under Section 156(3) of the Code.

(xv) Upon considering the materials on record and the allegations made in the petition the learned Additional Chief Judicial Magistrate, Siliguri by order dated 06.02.2021 allowed the prayer of the opposite party no.2-complainant and directed officer-in-charge, Matigara Police Station to register the petition as FIR and cause investigation in the matter. Accordingly, the FIR came to be registered against the petitioner and others.

3. Being aggrieved by and dissatisfied with the aforesaid proceeding the petitioner, being Managing Director & Chief Executive Officer of HDB Financial Services Limited, has preferred the present revisional application.

4. Mr Sabyasachi Banerjee, learned advocate for the petitioner at the very outset relying on the decision of Hon'ble Supreme Court passed in ***Lalita Kumari versus Government of Uttar Pradesh & Others*** reported in (2014) **2 SCC 1** submitted that in cases relating to commercial offences it is mandatory that before registration of the FIR under Section 154 of the Code a preliminary inquiry should be conducted to ascertain whether cognizable offence is disclosed or not in the information or petition as the case may be. However the learned Magistrate while issuing direction for treating the petition as FIR and causing investigation failed to adhere to the directions passed by the Hon'ble Supreme Court in its aforesaid decision. He has also placed reliance on the decision of this court passed in ***CRR 1383 of 2021 (Varun Goenka versus State of West Bengal and Another)*** and ***CRR 1534 of 2021 (Rahul Kr Shaw and Others versus State of West Bengal and Another)***.

It has further been submitted that admittedly the complainant and her late husband voluntarily delivered the cheque in question to the Finance Company and thus the question of forgery by the petitioner in respect of the aforesaid cheque does not arise at all. Moreover, on issuance of a cheque a statutory presumption arises that it has been issued for discharge of existing debt or liability in whole or in part as per provisions of Section 139 of the Act. The trial magistrate before whom the HDB Financial Services Limited has

initiated proceeding under Section 138 and 141 of the Negotiable Instruments Act, 1881, in relation to dishonour of cheque issued by the complainant and her late husband, is to decide whether the demand raised in respect of the said cheque is legal, valid and enforceable or not.

Furthermore it is submitted that the complainant has initiated the instant proceeding only after the demand notice under the Negotiable Instruments Act, 1881 was issued against her, which fact clearly indicates that the initiation of present criminal proceeding has been made with an ulterior motive of wreaking vengeance and pre-empt the filing of the criminal complaint against her under Section 138 of the said Act by the Finance Company. Thus, as in order to pre-empt the impending proceeding under Section 138 of the said Act the complainant has initiated the present case hence it would be an abuse of process of court to continue with the instant proceeding and it needs to be quashed. He has placed reliance on the decision of Hon'ble Supreme Court passed in ***Sunil Kumar versus Escorts Yamaha Motors Ltd and Others*** reported in ***(1999) 8 SCC 468*** and ***Mahindra & Mahindra Financial Services Limited and Another versus Rajiv Dubey*** reported in ***(2009) 1 SCC 706*** and decision of this Hon'ble Court passed in ***Philips Lighting India Ltd versus State of West Bengal and Ors*** reported in ***MANU/WB/1325/2017***.

Moreover it is submitted that in the petition under Section 156(3) of the Code filed by opposite party no.2-complainant no specific role has been ascribed to the petitioner attaching vicarious liability on his part. In a criminal proceeding where a company is the accused, its Directors can be roped only if there is sufficient incriminating evidence against them coupled with criminal intent or the statutory regime attracts the doctrine of the vicarious liability. In support of his contention he relied on the decision of Hon'ble Supreme Court passed in **Sunil Bharti Mittal versus Central Bureau of Investigation** reported in **(2015) 4 SCC 609** and **Maksud Saiyed versus State of Gujarat and Ors.** reported in **(2008) 5 SCC 668**.

In light of his aforesaid submissions he prayed for quashing of the instant proceeding as against the petitioner.

5. In reply to the aforesaid contentions raised on behalf of the petitioner, Mr Suresh Kumar Mitruka, learned advocate appearing for opposite party no.2-complainant at the threshold submitted that the present application for quashing has been filed by constituted attorney of the petitioner and as per settled proposition of law an application for quashing under Section 482 of the Code is not maintainable at the instance of power of attorney holder. In support of his contention he placed reliance on the decision of Hon'ble Punjab & Haryana High Court passed in **Amit Ahuja versus Gian Parkash Bhambri** reported in **2010 SCC Online P & H 4856** and an unreported

decision of Hon'ble Delhi High court passed in ***Amrinder Singh @ Raja through: SPA Holder Sukhjinder Singh in CRL.M.C 1571 of 2021*** and decision of Hon'ble Karnataka High Court passed in ***Samantha Christina Dellfina Willis and Ors. Versus State of Karnataka and Ors.*** reported in ***MANU/KA/2526/2022***

He further submitted that the cheque in question was presented by HDB Financial Services Limited for encashment after the demise of one of the partners of Shree Techno Services namely Indrajit Mukherjee. Furthermore there is variance in the demand made under the SARFAESI Act *vis-a-vis* Negotiable Instruments Act inasmuch as in the notice under the SARFAESI Act the claim of the accused-firm was Rs. 34 lakh odd whereas by notice under the Negotiable Instruments Act demand of more than Rs. 50 lakhs has been made which clearly shows that the accused-firm has proceeded to pressurize the complainant in order to extort more money and hence there is no legality in the approach of the accused-firm. In view of the attending circumstances the proceeding under Section 138/141 of the Negotiable Instruments Act filed against the opposite party no.2-complainant and Shree Techno Services has been stayed by the Hon'ble High Court in CRR 987 of 2021 vide order dated 30.04.2021.

Moreover it is submitted that the complainant's firm also filed an application before the Debts Recovery Tribunal, Siliguri being SA/46/2022. The HDB

Financial Services Limited inspite of service of notice did not appear. Upon hearing the learned tribunal by order dated 23.05.2022 restrained the Finance company from proceeding further under the SARFAESI Act till appearance and filing written objection in the case.

He further submitted that it is not possible for the opposite party no.2-complainant, by her individual capacity, to ascertain and know of the specific role played by different persons including the petitioner in forging and preparing a false document namely the cheque, which was presented for encashment, for the reason that the cheque in question was in the custody of the Finance Company of which the petitioner is the Managing Director and therefore in order to find out the extent of involvement and the role played by different persons in the alleged offence a thorough investigation by the police authority is very much required in the interest of justice.

In the light of his aforesaid submissions he prayed for dismissal of the instant revisional application.

6. Mr Aniruddha Biswas, learned advocate for the State relying on the decision of the Hon'ble Supreme Court passed in ***Lalita Kumari (supra)*** submitted that where information disclosing cognizable offence is made the police authority is under legal obligation to register FIR and there is no requirement of making preliminary inquiry and as such the order of the learned Magistrate is within the parameters of law.

He further submitted that in order to unearth the veracity of the allegation made in the complaint, thorough investigation is required and as such there cannot be any justification to stop the investigation at a nascent stage. In support of his contention he relied on the decision of Hon'ble Supreme Court passed in ***Teeja Devi alias Triza Devi versus State of Rajasthan and others*** reported in **(2014) 15 SCC 221**.

He further submitted placing reliance on the decision of Hon'ble Supreme Court passed in ***State of Haryana versus Bhajan Lal*** reported in **1992 SCC (Cri) 426** that powers under the provisions of Section 482 of the Code can be invoked only when the allegations made in FIR or complaint even if taken at their face value and accepted in their entirety does not *prima facie* constitute any offence or make out a case against the accused. As in the case at hand there are materials to proceed with the investigation of the case, therefore quashing of the instant proceeding would result in holding back a genuine litigation.

In view of his above submissions he prayed for dismissal of the revisional application.

7. In reply to the contention raised on behalf of opposite party no.2-complainant regarding maintainability of the application, Mr Banerjee, learned advocate for the petitioner drew the attention of the court that as per Appellate Side Rules of the Calcutta High Court every petition shall be signed,

and dated either by the petitioner or his authorized agent and as such the contention of opposite party no.2-complainant in this regard is totally meritless.

8. Before delving into the merit of the instant application it would be apposite to deal with the aspect of maintainability of the present revisional application as raised on behalf of opposite party no.2-complainant. Mr Mitruka learned advocate for opposite party no.2-complainant relying on the decisions of various High Courts passed in ***Amit Ahuja (supra)***, ***Amrinder Singh @ Raja (supra)*** and ***Samantha Christina Dellfina Willis (supra)*** argued that an application for quashing under Section 482 of the Code is not maintainable at the instance of a power of attorney holder. *Per contra* Mr Banerjee, learned advocate for the petitioner placing reliance on the Appellate Side Rules of this High Court submitted that the application for quashing is maintainable at the instance of constituted attorney. In order to consider the rival contention of the parties it would be appropriate to look to relevant Appellate Side Rules of this Court. Rule 8 of Chapter IV of Appellate Side Rules of this Court (*General Rules for Applications and Affidavits*) provides that every application shall be signed and dated either by the applicant or declarant or his advocate. Therefore it goes without saying that an application for quashing under Section 482 of the Code filed by the constituted attorney of the petitioner, who is also the declarant as well of the instant application, has been made in

accordance with the Appellate Side Rules of this Court and is maintainable as per the said Rules. Some decisions of other High Courts have been relied upon by opposite party no.2-complainant wherein it is observed that application for quashing under Section 482 of the Code is not maintainable at the instance of constituted attorney, however, no such authority or decision of this Hon'ble Court has been placed in support of such contention. In view of the available Appellate Side Rules of this Court, I am constrained to hold that the application for quashing under Section 482 of the Code is maintainable at the instance of the power of attorney holder. Therefore the argument advanced in this regard by learned advocate for opposite party no.2-complainant fall short of merit.

9. Now I revert to the merit of the present application. On going through the averments made in the petition under Section 156(3) of the Code it is found that the complainant along with her husband availed loan facilities in the name of partnership firm namely Shree Techno Services. However upon death of the husband of the complainant on 30.07.2019 the aforesaid firm and its current account in Axis Bank were closed. Admittedly, at the time of availing credit facilities the original deeds of property within mouza-Thiknikata, Matigara, District-Darjeeling as well as seven numbers of blank cheques were delivered to the HDB Financial Services Limited of which the petitioner is the Managing Director & Chief Executive Officer. The HDB Financial Services

Limited on 03.09.2020 contending of non-payment of outstanding loan amount issued notice under Sections 13(2) read with Section 13(13) of the SARFAESI Act demanding a sum of Rs. 34,86,706/-. In reply dated 21.10.2020 to the aforesaid notice the complainant, in addition to other relevant facts, informed the death of one of the partners who was also one of the drawer of the cheque namely Indrajit Mukherjee, to HDB Financial Services Limited. However, subsequent thereto a cheque bearing no. 118460 dated 10.12.2020 amounting to Rs. 50,77,261/-was placed for encashment in the month of December, 2020. Thus, it manifest that the aforesaid cheque was placed for encashment in the month of December, 2020 after the demise of one of the partners of Shree Techno Services namely Mr Indrajit Mukherjee husband of the complainant and one of the drawer of those blank cheques. The fact that the Finance Company had the knowledge of the death of Indrajit Mukherjee, one of the partners of Shree Techno Services, at the time of submitting the cheque for encashment has not been denied by the petitioner. Accordingly, it appears that inspite of such knowledge of death of one of the partners, who was also one of the drawer of the cheque, the HDB Financial Services proceeded to place the cheque for encashment when the current account was closed due to such death. Further it is also found that the demand made by the HDB Financial Services Limited in its notice under the SARFAESI Act is at variance with the amount demanded under the Negotiable Instruments Act. Undisputedly both the loan accounts being no.1190917

amounting to Rs. 60,77,261/- and no. 4440752 amounting to Rs. 30,00,000/- respectively were secured under insurance coverage of HDFC Life Insurance Company Limited against any untoward future eventuality. It appears from the legal notice dated 3 August 2020 issued on behalf of opposite party no.2-complainant that after the demise of one of the partners of Shree Techno Services, the opposite party no.2-complainant by letter dated 28 August 2019 arranged to submit two separate HDFC life claim form duly filled up through the representatives of the HDB Financial Services, Siliguri Branch in respect of both the loan accounts alongwith all requisite documents for processing of such claim. However despite steps being taken to settle the claim, the HDB Financial Services Limited chose to initiate proceeding against the complainant and her firm under Section 138 read with Section 141 of the Negotiable Instruments Act before Chief Metropolitan Magistrate, Calcutta being Case no. CS/8541 of 2021 for dishonour of aforesaid cheque. This Hon'ble Court in CRR 987 of 2021, considering the circumstances of the case, was pleased to stay the proceeding under the Negotiable Instruments Act by its order dated 30.04.2021.

9.1. The opposite party no.2-complainant also filed an application before the Debts Recovery Tribunal, Siliguri being SA/46/2022 contending, *inter alia*, that the loans were insured by the HDFC company limited and they were settled and payments were made by the insurance company to the defendant

financial company i.e HDB Financial Services Limited however in spite of settlement of death claim the applicant no.2 (opposite party no.2-complainant herein) was asked to make payment of Rs.31,05,951/-along with interest. In spite of service of notice the defendant namely HDB Financial Services Limited did not appear before the learned tribunal. The question that fell for consideration before the learned tribunal at the time of hearing IA Petition no.179 of 2022 was when the loans were insured and death claim was settled then under what circumstances the wife of the deceased was asked to make payment of 31 lakhs and odd. The learned tribunal after considering the entire circumstances restrained the defendant financial company namely HDB Financial Services Limited from proceeding further under the provisions of SARFAESI Act till appearance and filing of the written objection in the case.

9.2. The aforesaid facts primarily show that out of seven blank cheques delivered by the complainant and her late husband to the Finance company at the time of disbursement of loan, one of such cheque has been incorporated with an inflated amount by the said Finance company and that too after the demise of one of the drawer of the said cheque and therefore a cognizable case has been disclosed. There are primary materials to proceed with the investigation of the case to ascertain the complicity of the persons in the alleged offence. Fact remains that it is not possible for the complainant to know of specific role of the petitioner or any other person in such

incorporation in the blank cheque as those were in the custody of the Finance Company of which the petitioner is the Managing Director & Chief Executive Officer as has been rightly argued by Mr Mitruka, learned advocate for opposite party no.2-complainant.

10. Mr Banerjee, learned advocate for the petitioner relying on the decision of Hon'ble Supreme Court passed in ***Sunil Bharti Mittal (supra)*** and ***Maksud Saiyed (supra)*** has argued that in a criminal proceeding where a company is the accused, its Directors can be roped only if there is sufficient incriminating evidence against them coupled with criminal intent or the statutory regime attracts the doctrine of the vicarious liability and as no specific role has been ascribed to the petitioner attaching vicarious liability on his part hence the proceeding needs to be quashed. It is pertinent to note that the investigation of the case is underway. Whether the petitioner being the Managing Director & Chief Executive Officer of the company has any role in the alleged offence can be deciphered only on the conclusion of investigation. Further the facts involved in the aforesaid cases before the Hon'ble Supreme Court is quite dissimilar to the case at hand. The Hon'ble Supreme Court in ***Teeja Devi alias Triza Devi (supra)***, relied on behalf of the State, has held in paragraph no. 5 and 9 as follows.

“5.....As per law settled by catena of judgments, if the allegations made in the FIR prima facie disclose a cognizable offence, interference with investigation is not

proper and it can be done in rarest of rare cases where the court is satisfied that the prosecution is malicious and vexatious.

6.xxxxxx

7.xxxxxx

8.xxxxxx

9.....*This is not at all a rare case. Without a thorough investigation, it is not possible or proper to hold whether the allegations made by the complainant are true or not. Hence the investigation should have been allowed to continue so that filing of the report under Section 173 CrPC the affected party could pursue its remedy against the report in accordance with law. Keeping in view the fact that the criminal case was at the stage of investigation by the police the High Court was not justified in holding that the investigation of the impugned FIR is totally unwarranted and that the same would amount to gross abuse of the process of the court.”*

In the case at hand it is found that the complaint disclose a cognizable offence and therefore bearing in mind the aforesaid observation of the Hon’ble Court in order to unearth the veracity of the allegation made in the complaint thorough investigation is required and as such there cannot be any justification to stop the investigation at a nascent stage. Accordingly, the argument advanced on behalf of the petitioner falls short of merit.

11. Relying on the decision of Hon’ble Supreme Court passed in **Lalita Kumari (supra)** Mr Banerjee, learned advocate for the petitioner argued that

in cases relating to commercial offences it is mandatory that before registration of the FIR under Section 154 of the Code a preliminary inquiry should be conducted to ascertain whether cognizable offence is disclosed or not in the information or petition as the case may be. *Per contra* Mr Biswas, learned advocate for the State submitted that the Hon'ble Supreme Court in the aforesaid decision has clearly observed that where information disclosing cognizable offence is made the police authority is under legal obligation to register FIR and no preliminary inquiry is necessary. In order to appreciate the issue raised on behalf of the petitioner it would be apposite to reproduce the concluding observation made by Hon'ble Supreme Court in its decision passed in ***Lalita Kumari (supra)*** which is as follows.

"120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the

first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should

be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/ Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

The aforesaid observation of the Hon’ble court manifest where the information discloses commission of a cognizable offence, no preliminary inquiry is permissible in such a situation and FIR has to be registered mandatorily. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. As in the present case at hand it is already found that the petition under Section 156(3) of the Code filed by the opposite party no.2-complainant discloses cognizable offence hence as per observation of the Hon’ble Court no preliminary inquiry is permissible in such a situation. This Court in its decision passed in CRR 1383 of 2021 and CRR 1534 of 2021 cited on behalf of the petitioner has held that the observation of the Hon’ble Supreme Court in **Lalita Kumari (supra)** does not suggest for holding preliminary inquiry mandatorily. Therefore the

argument advanced on behalf of the petitioner throwing challenge to the proceeding on the ground of absence of holding preliminary inquiry by the investigating agency does not hold good.

12. It has been strenuously argued on behalf of the petitioner that admittedly the complainant and her late husband handed over the cheque in question to the Finance company at the time of disbursement of loan and as such the allegation of forgery is far-fetched. On issuance of a cheque statutory presumption arises that it has been issued in discharge of existing debt or liability in whole or in part as per Section 139 of the Act and it is for the trial magistrate before whom such case is pending to decide whether the demand raised in respect of the said cheque is legal, valid and enforceable or not. Having heard the learned advocate for the petitioner on this issue, it is pertinent to note that undisputedly seven numbers of blank cheques were handed over to the Finance company at the time of disbursement of loan. It is also found that the cheque in question was placed for encashment after the demise of one of the drawer of the cheque and an inflated value has been incorporated in the cheque which is at variance to the amount demanded by way of notice under the SARFAESI Act. In view of the distinctive facts involved in the present case, whether there was any act of forgery on the part of the petitioner being the Managing Director & Chief Executive Officer requires to be thoroughly investigated by the investigating agency. Although

Section 139 of the Act provides a statutory presumption that on issuance of a cheque there is presumption that it is issued in discharge of existing debt or liability yet one cannot be oblivious to the peculiar facts noted above with regard to the cheque in question. Thus the argument advanced on behalf of the petitioner fall short of merit.

13. Placing reliance on the decision passed in ***Sunil Kumar (supra); Mahindra & Mahindra Financial Services Limited (supra)*** of the Hon'ble Supreme Court and ***Philips Lighting India Ltd (supra)*** of this court, learned advocate for the petitioner submitted the instant criminal proceeding has been initiated with an ulterior motive for wreaking vengeance and pre-empt the filing of the criminal complaint against her under Section 138 read with Section 141 of the Act. In all the aforesaid decisions cited on behalf of the petitioner it is found that the allegation in the complaint did not disclose necessary ingredients of the offence alleged and on such score the proceeding was quashed. However in the case at hand there are allegations of putting a distended high value in the blank cheque delivered to the Finance company of which the petitioner is the Managing Director & Chief Executive Officer. Further the said cheque was placed for encashment after the demise of one of the drawer of the cheque. Thus, the allegations primarily disclose materials to proceed with the investigation. The facts involved in the aforesaid decisions

are distinguishable from the facts of the case at hand and hence the argument made on behalf of the petitioner does not stand to reason.

14. The Hon'ble Supreme Court in ***Bhajan Lal's Case (supra)*** observed that 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, on such ground power under Section 482 of the Code can be invoked. As far as the present case is concerned the complaint does disclose an offence. Further the Hon'ble Court in the aforesaid decision held 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. It is pertinent to note that the present case at hand is not at all a rarest of rare case.

15. It is settled principle of law that at the stage of quashing FIR or complaint it is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein unless they are so absurd and inherently improbable that no prudent man can ever reach to just conclusion. ***(See Rupan Deol Bajaj (Mrs) and Another versus Kanwar Pal Singh Gill and Another reported in (1995) 6 SCC 194)***. It is placed on record that there is neither any absurd or inherent improbability noted in the facts of the present case nor the facts alleged in the complaint on its face value fails to disclose an offence. As it is already found that there are primary

materials to proceed, hence invoking inherent power will lead to stifling of a legitimate litigation.

16. Accordingly, in the light of above discussion the instant criminal revision being **CRR no. 139 of 2021** stands dismissed on contest.

17. However, it is made clear that the observations made hereinabove shall not have any bearing on the rights and contentions of the petitioner before the trial court.

18. All connected applications if any stands disposed of.

19. Interim orders, if any, stand vacated.

20. Let a copy of this judgment be sent to the learned trial court for information.

21. Urgent Photostat Certified copy of this judgment, if applied for, be supplied to the parties expeditiously after complying with all necessary legal formalities.

(Bivas Pattanayak, J.)