

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 5252 OF 2018

1. Saminder Kaur Dalijtsing Matharoo
 2. Daljeet Singh Sardar Singh Matharoo
- ...Petitioners

Versus

1. The State of Maharashtra
 2. Tara Singh Nagpal
- ...Respondents

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Mr. Jagdish Shetty with Mr. Shankar L. Mhatre, Advocate for the Petitioners.

Mr. Heralal Chaturvedi, Advocate for Respondent No.2.

Mr. A.R. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 25th JULY 2022

PER COURT:

1. The Petitioners are prosecuted for offences under Sections 406 and 420 of Indian Penal Code (for short “IPC”) vide private complaint filed by Respondent No.2 in the Court of learned Metropolitan Magistrate, 22nd Court, Andheri, Mumbai viz. C.C. No.216/SW/2012.

2. The brief facts of the complaint are as under :-

- i) The complainant is carrying on business of supplying petroleum products under the style and name as ‘Guru

Nanak Automobiles' being the dealers of Bharat Petroleum Corporation Limited situated at 82, Andheri-Kurla Road, Andheri (East), Mumbai.

ii) The accused are directors of Bharati Automobiles Pvt. Ltd. They are husband and wife. They are known to the complainant and his family.

iii) The accused represented that, they have lucrative business of their company and that they would take dealership of the reputed international automobile company. They were also holding dealership of Tata Motors. They would convert their Private Limited Company into Public Limited Company and invest the money received from the common funds in their company.

iv) On the representation of the accused, the complainant was induced to pay Rs.50,00,000/- by cheque No.347415 dated 31.12.2010 drawn on Punjab and Maharashtra Bank Ltd. Andheri (East) branch. The said amount was credited in the account of accused company.

v) The complainant learnt that, there was no development of business of the accused and that they did not get dealership of any agencies and they were indebted to

several parties.

vi) On 01.03.2012, meeting was held in the office of accused when both the accused assured to refund the said amount and gave the cheque bearing No.000509 dated 26.03.2012 for Rs.50,00,000/- drawn by Bharati Automobiles Pvt. Ltd on New India Bank in favour of complainant signed by the accused and assured that, there would be sufficient balance in their account. Accused also handed over the cheques to the complainant's brother and sister.

vii) The cheque was deposited with PMC Bank, Andheri (East) branch on 26.03.2011. The cheque was returned with a memo 'Account Frozen - Income Tax Attached'. Six other refund cheques given to complainant, his brothers and sister by accused were dishonoured. The total amount was involved for Rs.3,40,00,000/-.

viii) The accused deliberately suppressed the fact that, their account was already frozen by the Income Tax and the representations were proved to be false. The intention was dishonest from beginning as the accused had never got any agencies and never converted their private company into

public limited company. They were indebted to several parties and the prosecution under Section 138 are pending against them for dishonouring the cheques.

ix) The accused committed criminal breach of trust in respect of amounts received from the complainant and his relatives and never intended to make any payment to them.

x) The accused induced the complainant to part with the sum of Rs.50,00,000/- paid by complainant through the bank and the said amount was entrusted to the accused as refundable deposit and the same was agreed to be refunded by cheques from the account which was already attached by the Income Tax. Thus, the accused committed the offence under Section 406 and 420 of IPC. Complaint was filed.

xi) Complainant approached MIDC Police Station but they have not taken cognizance of complaint.

3. Verification statement of the complainant was recorded on 13.06.2012. Vide order dated 16.06.2012 the Court issued process against the accused under Section 406 & 420 of IPC. While passing the said order it was observed that, it appears that the accused knew while issuing process that his bank account is already frozen by income tax. Prima facie case is made out for issuing process against the accused under Section 406 & 420 of IPC.

4. The Petitioners preferred applications under Section 245(2) of Cr.P.C. for discharge. The Application was opposed by the complainant by filing reply dated 17.12.2013. Vide order dated 28.04.2015, the application for discharge was rejected.

5. The Order dated 28.04.2015 passed by the learned Magistrate was challenged by the Petitioners by preferring Revision Application No.876 of 2015 before the Sessions Court. The learned Additional Sessions Judge for Greater Mumbai, by order dated 11.05.2018 dismissed the revision application.

6. Learned Advocate for the Petitioners submitted that, both the Courts below have committed an error while passing the impugned Orders. The offences under Sections 406 or 420 are not made out. There was no evidence to proceed against the accused and the trial Court ought to have allowed the application for discharge. The Respondent No.2 filed two complaints in the past vide C.C. No.1223/SS/2012 and CC No.1219/SS/2012 which are pending in the respective Court. The previous cases relates to dishonour of cheques. The impugned complaint also relates to dishonour of cheques. While filing previous complaints, the complainant's did not allege the offence of criminal breach of trust or cheating. However, for the first time in the third complaint i.e. the impugned

complaint, it is alleged that, there was inducement/misappropriation/cheating. The present case cannot be distinguished from the previous two cases, where the aforesaid penal provisions were not invoked by the Petitioners. There is no material to proceed against the accused for offences under Sections 406 & 420 of IPC. The verification statement was recorded mechanically. The Petitioner No.1 had not played any role in the transactions. She has been falsely implicated in this case. There was no inducement to part any amount in favour of Petitioners. There was no misappropriation of amount. The transaction was purely of a civil nature. The Petitioner No.1 was not taking part in day to day affairs of the business of Bharati Automobiles Private Ltd. She resigned from the company in January - 2012. She is not signatory to the cheques. She did not make any representations to the complainant.

7. Learned Advocate for Respondent No.2 submitted that, the complaint makes out the ingredients constituting offences under Sections 406 and 420 of IPC. There is no infirmity in the verification of the statement. The representations made by the accused were false. The amount was entrusted to the accused with a particular purpose. It was misappropriated. The complainant

was induced to part with the amount. The Petitioners had approached the learned Chief Metropolitan Magistrate for transferring and clubbing all case. The said application was rejected by order dated 31.12.2014. The accused are trying to delay the proceedings. The previous complaints and the present complaint can be distinguished.

8. The documents on record makes it evident that the Respondent No.2 filed complaint bearing C.C. No.1223/SS/2012 on 17.05.2012. The said complaint relates to cheque No.288847 dated 26.03.2012. The cheque was for an amount of Rs.2,00,000/-. It was dishonoured on 26.03.2012 with remark 'insufficient funds'. Second complaint viz. C.C. No.1219/SS/2012 relates to cheque No.338522 dated 26.03.2012. It was for an amount of Rs.5,00,000/-. It was dishonoured on 26.03.2012 with remark 'insufficient funds'. The cheque dated 26.03.2012 bearing No.000509 was issued for an amount of Rs.50,00,000/-. The said cheque was dishonoured with remarks 'Account Frozen - Income Tax Attached'. This cheque is the subject matter of the impugned complaint. The complaint was filed on 02.06.2012 for offence under Sections 406 & 420 of IPC. The first two complaints were filed for offence under Section 138 of NI Act. The cheques which

were subject matter of those complaints were dishonoured with remarks 'Funds Insufficient', whereas the cheque which is subject matter of impugned complaint was dishonoured with remark "account frozen - Income Tax attached". In this complaint it is asserted that the amount was entrusted to the accused on the false representation by both the accused by way of refundable deposit and the same was agreed to be refunded by the cheques from the accused which was already attached by the income tax. Thus, the accused had committed for offence under Sections 406 & 420 of IPC. Overt act has been attributed to both the accused for offence under Sections 420 or 406 of IPC. The Petitioner No.1 has claimed that, she had resigned from the company. Form No.32 indicate that, she had resigned from the company on 02.11.2012, which is after the dishonour of cheque. The representations made by the accused were false. The complainant was induced to part with amount of Rs.50,00,000/-. While issuing process, the learned Magistrate had observed that the accused knew that while issuing cheque, the bank account was frozen. The complaint refers to false representation of both accused. Believing representations complainant was induced to pay Rs.50,00,000/-. Meeting was held on 01.03.2012 and accused assured to refund the amount and gave the cheque and assured that there would be sufficient balance in

their account. Sufficient balance in their account. Accused also gave cheques to complaints brother and sister. The cheque was dishonoured for aforesaid reason. Six other cheques given to complainant, his brothers and sister were also dishonoured. The amount involved is Rs.3,40,00,000/-. There is no denial of receipt of amount by accused. While rejecting the application for discharge the learned Magistrate has observed that, it cannot be said that by merely filing cases under Section 138 of N.I. Act, the complainant cannot file other cases pertaining to offences of cheating and criminal breach of trust. In view of sufficient material it cannot be said that, charge is totally groundless, at this stage. There is sufficient material against the accused. The sessions Court has confirmed the order passed by learned Magistrate. The petitioners had preferred application under Section 245(2) of Cr.P.C. The said provision empowers the Court to discharge the accused at any previous stage, than contemplated under Section 245(1) of Cr.P.C. However, for reasons to be recorded by such magistrate, he considers the charge to be groundless. In light of allegations in the complaint and material on record it cannot be said that the charge is groundless. There is no reason to set aside the impugned orders. While adjudicating the application under Section 245(2) of Cr.P.C. the trial Court is not expected to conduct

deep inquiry and/or appreciate the evidence. There is no infirmity in the impugned Orders by learned Magistrate and learned Sessions Judge. The complainant is senior citizen aged around 76 years. The case is pending from 2012. Hence, trial is required to be decided expeditiously.

ORDER

- i) Writ Petition is dismissed and disposed of;
- ii) Trial is expedited;
- iii) Trial Court is requested to make an endeavour to conclude the trial within nine months from the date of receipt of copy of this order.

(PRAKASH D. NAIK, J.)