

CRR 1356 of 2008
CRAN 1 of 2010

In the matter of : Chandan Kr. Mondal

Mr. Milon Mukherjee, Sr. Adv.
Mr. Rahul Ganguly ... for the petitioner.

Mr. Prasun Kr. Dutt, Ld. APP
Md. Kutubuddin
Mr. Santanu Deb Roy ... for the State

This application is manifestation of displeasure of the petitioner over the order dated 29.02.2008 passed by the learned Additional Chief Judicial Magistrate, Sealdah in Section 'M' (Cossipore P.S.) Case No. 60 of 2007.

Facts of the case in short is that Sri Kalyan Kumar Banerjee filed an application before the learned Additional Chief Judicial Magistrate, Barrackpore alleging inter alia that Chandan Kumar Mondal, the accused person, took a sum of Rs.1 lakh from him to invest the same in stock market through a broker. The money was paid by cheque which was duly encashed. According to the petitioner, the accused person was under obligation to return the same amount upon notice of twenty one days. On 31.8.2005 the complainant demanded the money and a cheque was issued on 21.9.2005 by the accused person for a sum of Rs.21,500/- drawn on H.D.F.C. Bank which was dishonoured due to insufficient fund. When the matter was brought to the notice to the drawer of the cheque he apologized and paid a sum of Rs.4,000/- by a cheque

but he did not pay the rest of Rs.96,000/-. The complainant informed the Baranagar P.S. which was recorded under G.D.E. No. 322 dated 05.01.2007. The complainant sent a notice through his lawyer demanding refund of Rs.1 lakh but the accused person refused to act in terms of notice. The matter was brought to the notice to the Additional Superintendent of Police, Barrackpore by the complainant and ultimately he decided to approach the learned Additional Chief Judicial Magistrate, Barrackpore. Learned Additional Chief Judicial Magistrate, Barrackpore forwarded the petition under Section 156(3) of Code of Criminal Procedure to Baranagar Police Station which was subsequently forwarded to Cossipore Police Station, which was the jurisdictional police Station. Cossipore Police Station Case No. 60 dated 21.5.2007 was registered. Police took up investigation which culminated into submission of charge sheet. Learned Additional Chief Judicial Magistrate, Sealdah was pleased to take cognizance of the case and issued warrant of arrest.

Drawing my attention to the agreement entered into by and between the complainant and the accused person, Mr. Mukherjee, learned senior counsel, appearing on behalf of the petitioner submits that a transaction took place consequent upon the execution of the agreement which demonstrates the purpose of money given to the accused person how and when it should be returned.

Drawing my attention further to the statement of accounts annexed to the petition, it is submitted that the complainant and the accused person were engaged in trading of share in the stock

market for a considerable period of time and there is nothing to suggest that since the inception the accused person had the intention to dupe the complainant, therefore, the accused person cannot be saddled with criminal liability for the offence committing within the meaning of Section 420 of the Indian Penal Code.

Mr. Dutt, learned A.P.P. appearing on behalf of the State with all fairness submits that *mens rea* in the case is glaringly missing. No person can be made culpable for committing any offence in absence of any *mens rea*.

It is at best a civil dispute which is imbibed with the colour of criminality.

I am of the view that this is a fit case to invoke the inherent power under Section 482 of the Code of Criminal Procedure and to quash the proceeding pending before the learned Additional Chief Judicial Magistrate, Sealdah.

With this observation, the criminal revision is disposed of along with application if any.

Let a copy of the order be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)